

U. S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

DELIVERMED HOLDINGS, LLC, an
Illinois Limited Liability Company,
MARK SWIFT, LINDA DEETER, and
WILLIAM R. DEETER ASSOCIATES, INC.,
Plaintiffs,

v.

MICHAEL L. SCHALTENBRAND,
MEDICATE PHARMACY, INC, and,
JOEY D. SIDDLE,

Defendants.

Case 3:10-cv-684-JPG

CONSOLIDATED WITH:

MARK A. SWIFT,

Plaintiff,

v.

MEDICATE PHARMACY, INC, and
MICHAEL L. SCHALTENBRAND,

Defendants.

Case 3:10-cv-685-JPG

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS

BEFORE THE HONORABLE J. PHIL GILBERT
UNITED STATES DISTRICT JUDGE

April 26, 2012

COURT REPORTER: Christine A. Simpson, CRR, RPR, CSR
UNITED STATES DISTRICT COURT
301 W. Main Street
Benton, IL 62812
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Proceedings recorded by mechanical stenography, produced
by computer-aided transcription.

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1 (Proceedings began at 8:28 a.m. in open court.)

2 THE CLERK: This Honorable Court is now in
3 sessi on.

4 MR. MCGURK: Your Honor, one small thing.
5 Yesterday we showed via distance the witness Mr. Craig
6 Greene two pages of the Handbook of Small Business --

7 THE COURT: Right. I remember that. You want
8 that admitted?

9 MR. MCGURK: I thought just admit it so the record
10 would be clear.

11 THE COURT: Okay, it will be admitted.

12 MR. MCGURK: That will be Plaintiff's Exhibit 98.

13 THE COURT: Okay, that will be admitted.

14 MR. MCGURK: Thank you, Your Honor.

15 MS. SCHICK: Are we ready to proceed?

16 THE COURT: We are ready to proceed.

17 JOEY D. SIDDLE,
18 having been previous sworn, was examined and testifies as
19 follows:

20 CROSS-EXAMINATION

21 BY MS. SCHICK:

22 Q. Good morning, Mr. Siddle.

23 A. Good morning.

24 Q. You've talked to the Court in two, in a couple
25 pieces, so I'm going to go over a couple background things

1 just to make sure we are all on the same page.

2 Could you tell me again what is your role in this
3 mail order business that we have been discussing?

4 A. I oversee all the operations of the Pharmacy and
5 the mail order.

6 Q. Do you hold any licenses or certifications
7 relevant to that?

8 A. I have a tech license from 2003, a pharmacy tech
9 license.

10 Q. Okay.

11 A. Yes, ma'am.

12 Q. Okay. And do you have any role in the billing
13 process of the Pharmacy?

14 A. Yes, ma'am. I have to make sure all the billings
15 are going out to the difference insurances.

16 Q. I think you told us Tuesday that Mark had a
17 marketing role with the business; is that correct?

18 A. Yes. One of his roles, yes.

19 Q. What other roles did he have?

20 A. One of the most important things is sell the
21 business -- sell all the patients off. And he had some
22 financial stuff he dealt with, fixing things and looking
23 at books and stuff.

24 Q. Do you know if he had any financial background or
25 experience?

1 A. Yes. He told me that he was a, a master's and
2 CPA, a Master's Degree in Accounting.

3 Q. Okay. And what was Mike's role in the mail order
4 business?

5 A. Mike was the, the pharmacist. He would come in
6 and check the meds for us for the mail order part. He
7 made sure the contracts were in place with the different
8 insurance companies, negotiated things with them, and
9 negotiated the buying of the drugs.

10 Q. Okay. And you said that Mike was a pharmacist.
11 Is Medicate Pharmacy Inc. a licensed pharmacy, to the best
12 of your knowledge?

13 A. Yes, ma'am, it is. Each -- yeah, Medicate Central
14 Pharmacy is, yes.

15 Q. Did you and Mark have titles that you refer to
16 each other as?

17 A. Yeah, at the beginning Mark had said that, Joe,
18 you be the COO and Mike's the CEO, and I'll be the CFO,
19 was kind of our little titles like that.

20 Q. And we talked about a formula that you used to
21 calculate profits. Was there an agreement on that formula
22 when the group began in 2005?

23 A. Yes. We had to come as a group to figure out what
24 that, that piece of business coming into an existing
25 pharmacy, how to build that, that group, all the overhead.

1 So basically we looked at the revenue. Do you want to
2 walk through it now?

3 Q. Well, yes. What was the agreements in terms of
4 how you were going to calculate the profits?

5 A. Yes. We would take the adjudicated, how much we
6 billed to the insurance companies, what the system told us
7 the drug cost was, and then -- and minus that off. And
8 then minus off \$7 for overhead per prescription. That's
9 how we calculated to get an idea of what that department
10 does. And then, then we had to figure out how to pay off
11 the, the marketing out the profits of that.

12 Q. Okay. And who had agreed to that formula?

13 A. All three of us, Mark, Mike and myself.

14 Q. Now tell me again, why was that \$7 per prescription
15 included?

16 A. We had to cover the cost of what that's costing
17 the pharmacy for us to be working within their pharmacy
18 within their pharmacists and all their techs, we gotta
19 figure out what our portion cost to that business.

20 Q. What were some of the costs or expenses that you
21 understood to be part of that 7-dollar charge?

22 A. Wow. All the computers, all the internet, the,
23 the electricity, the, the rent, all the insurances, the
24 health insurances, the licenses, the billing process, the
25 switching stations that charges so much for switching and

1 charging prescriptions, the staff, their payroll, the, the
2 robots that count the meds, and of course all the techs
3 and all the pharmacists.

4 MS. SCHRICK: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 Q. (BY MS. SCHRICK) Mr. Siddle, I'm handing you
8 what's been admitted as Plaintiff's Exhibit 97. Do you
9 recognize that as something you discussed with Mr. Cox
10 yesterday?

11 A. Yes, ma'am.

12 Q. Okay. And he went through certain of the expenses
13 that are listed there, and asked you if you had deducted
14 those, if they were included in your -- let me rephrase
15 that.

16 He went through certain of those expenses and
17 asked you if they were included in the 7-dollar charge
18 that we have been discussing; is that correct?

19 A. Yes, ma'am, we did.

20 Q. Okay.

21 THE REPORTER: Could you slow down just a little
22 bit?

23 MS. SCHRICK: Yeah, I'm sorry.

24 THE REPORTER: Thank you.

25 Q. (BY MS. SCHRICK) Did the mail order operation have

1 a physical location where it operated out of?

2 A. Yes, ma'am.

3 Q. Did it have office supply expenses?

4 A. Yes, ma'am.

5 Q. Do you see those reflected on line 18 of part two
6 of the Schedule C?

7 A. No, it says zero.

8 Q. Is mail order share of rent reflected on line 20
9 of this exhibit?

10 A. No, it says zero.

11 Q. How about its share of utilities on line 25?

12 A. Nope, it says zero.

13 Q. Were those things that you consider to be
14 legitimate expenses of the mail order business?

15 A. Yes, ma'am.

16 Q. Were those things that you consider to be part of
17 that 7-dollar charge?

18 A. Yes.

19 Q. Mr. Siddle, I'm handing you what's been admitted
20 as Plaintiff's Exhibit 8. Do you remember discussing
21 portions of that with Mr. Cox yesterday?

22 A. Yes.

23 Q. Could you turn to page 34 of that document?

24 THE COURT: Where is 8, K. Jane?

25 THE CLERK: It may be in your box.

1 THE COURT: I got it here. I got it here. Okay.

2 Q. (BY MS. SCHRICK) Mr. Siddle, if you could turn to
3 page 34, if you are not already there?

4 A. Yes, ma'am, I am.

5 Q. What is page 34 of Exhibit 8?

6 A. This is the, for Medicate Central Pharmacy -- let
7 me back up a second. This is for the Medicate Pharmacy
8 DeliverMed mail order split up, its financials.

9 Q. And for what time frame is this financial
10 statement?

11 A. This is showing the month of December 31st -- the
12 month of December for 2005.

13 Q. Okay. And I'm going to draw your attention to the
14 operating expenses section. Do you see that?

15 A. Yes, ma'am.

16 Q. Do you see any rent expense shown on that
17 operating expenses section?

18 A. There's no rent on here, no, ma'am.

19 Q. How about computer expense?

20 A. No, ma'am. None.

21 Q. Equipment?

22 A. No, there's none.

23 Q. Telephone?

24 A. No, ma'am. There's none.

25 Q. Insurance for employees?

1 A. No, there's none.

2 Q. Okay. Did mail order have those expenses?

3 A. Yes, ma'am.

4 Q. Okay. Mr. Siddle, I have handed you Plaintiff's
5 Exhibit 9. Could you turn to handwritten page 24 of that
6 exhibit, please.

7 A. Yes, ma'am.

8 Q. And what is page 24?

9 A. This is the financials for Medicate Pharmacy
10 Central there in Washington Park, and it's for December,
11 end of December 2005.

12 Q. Okay. So that would be the same time frame as
13 what we just looked at on the mail order --

14 A. Yes, the same month.

15 Q. Now looking at the Central financial statement, do
16 you see an entry for computing expenses?

17 A. Yes, ma'am.

18 Q. Do you see an entry for insurance?

19 A. Yes.

20 Q. Employee benefits?

21 A. Yes, there's an entry. Yes.

22 Q. Insurance for employees?

23 A. Yes.

24 Q. Licenses?

25 A. Yes, ma'am. There's an entry.

1 Q. And rent?

2 A. On the next page, yes.

3 Q. Okay.

4 A. There's an entry.

5 Q. So all of those expenses are broken out
6 specifically on the Central financial statement; is that
7 correct?

8 A. It is, correct, yes.

9 Q. And in addition to all of those specific expenses
10 there's also an entry for miscellaneous; is that right?

11 A. Yes. On page 25, yes, there is. There's a large
12 entry, yes.

13 Q. Was it your understanding that all of those
14 specific expenses that are shown on the Central financial
15 statement but not on the mail order statement were part of
16 the 7-dollar charge?

17 A. Yes, ma'am, it is.

18 Q. Okay. Changing gears here, Mr. Siddle. Were you
19 present in Court when Mike was questioned about certain
20 charges for Disney vacation trips?

21 A. Yes, ma'am, I was.

22 Q. Okay. Did you consider Mike's testimony generally
23 accurate in that regard?

24 A. Yes, it was accurate.

25 Q. Okay. How do you know that?

1 A. Because I was the one that booked the flights for
2 Mr. Smith.

3 Q. Okay. Did you have any other role in coordinating
4 Mr. Smith's travel?

5 A. Yes. I dealt with all the, the breakouts of any
6 type of bonuses, and he gets a little bit amount of money
7 every month. And he came to me and asked me if -- he
8 wanted to go to Disney with his kids for the first time
9 and didn't have a credit card.

10 Q. Let me ask you this: What is Mr. Smith's role in
11 Medicate Pharmacy?

12 A. He has -- he oversees all the, like we have a
13 robot, he oversees all of that. He oversees all of the
14 shipping department. And he's a pharmacist tech, too.

15 Q. Okay. Does he then work for mail order?

16 A. Yes, he does a little bit of both, for both
17 pharmacies. He does some of the retail, a little bit.
18 Most of the time, 90 percent of his stuff is mail order,
19 yes.

20 Q. So if you could, just tell me sort of step by
21 step how the arrangement for Mr. Smith for that vacation
22 worked.

23 A. He and I were just talking and he had, his kids
24 had never been to Disney and --

25 THE REPORTER: Could you just slow down just a

1 little bit for me, please?

2 THE WITNESS: Yes, ma'am.

3 THE REPORTER: Sorry to interrupt.

4 A. He had told me that they wanted to go to Disney
5 and had no credit card. And I came up with the idea and
6 said, hey, we pay you so much every, for bonuses every
7 month, what if I withheld that and I go to Mike and asked
8 him if they would book the flights and everything for
9 Disney for you. He was all excited.

10 I went to Mike and asked if we could do that. He
11 said yes, as long as you show, you know, that, you know,
12 he's paid it back or don't take off whatever you have to
13 take off and we started booking it.

14 Q. (BY MS. SCHRICK) Okay. And how many trips did Mr.
15 Smith take pursuant to that type of arrangement?

16 A. One in 2009 and 2010.

17 Q. Okay. Mr. Siddle, I have just handed you what's
18 been marked as Defendant's Exhibit 224. Do you have that?

19 A. Yes, ma'am.

20 Q. Okay. And do you recognize that?

21 A. Yes, ma'am. Hold on. (Pause.) Yes, I do. It
22 has to do with his trips and what was being booked.

23 Q. And who prepared or printed the documents that are
24 included in that exhibit?

25 A. I printed all of these.

1 Q. Okay. Turning your attention to the first page,
2 can you tell me what that reflects?

3 A. Every month he got a -- I put together like a memo
4 to Alisha, who is the bookkeeper, to let them know how
5 much the check was being cut. So what I did during that
6 time, I didn't, I just kind of held them off and then did
7 one big one showing from October to May, and it breaks out
8 what he was supposed to be getting. And then I minused
9 off what the trip cost that year and what the balance was.

10 Q. Okay. And according to page one, what was the
11 trip cost of the 2010 trip?

12 A. \$4,006.30.

13 Q. And according to page one, how much had been
14 applied to the cost of the 2010 trip?

15 A. \$3,435.

16 Q. Okay. And are there other similar memos
17 reflecting withholdings from Mr. Smith's bonuses in this
18 Exhibit 224?

19 A. Yes, there is.

20 Q. Do you have an understanding as to how much those
21 invoices total?

22 A. Total of both trips?

23 Q. Right.

24 A. Around 6500.

25 Q. Okay. Could you turn to page seven for me, please

1 with.

2 THE COURT: Of 224?

3 MS. SCHRICK: Yes, Your Honor.

4 Q. (BY MS. SCHRICK) What does page seven reflect?

5 A. This is the trip he took in 2010. This is the
6 flights that I booked for him.

7 Q. Okay. And can you tell me who the passengers are
8 that you booked flights for specifically?

9 A. There, two of his children and then a friend of
10 one of their friends came along, too. There was four of
11 them. Christopher Smith, his two daughters, and another
12 girl Kayla that was coming along too.

13 Q. And turning to page nine, what does that reflect?

14 A. This is a confirmation at the Disney resort.

15 Q. And again, who was staying at the Disney resort in
16 this reservation?

17 A. Mr. Smith, his two children, and then Kayla was
18 there, too, yes.

19 Q. Okay. And are there similar documents in Exhibit
20 224 relating to the Smith family's 2009 trip?

21 A. Yes, there is, on No. 19. Yes.

22 Q. Okay. And just to be clear, where were the
23 expenses for the Smith family's two trips initially
24 charged?

25 A. Charged to the company credit card --

1 Q. Okay.

2 A. -- for Washington Park.

3 Q. And did you have Mike's consent to place those
4 charges on the credit card?

5 A. Yes, ma'am. Both times I, I told him about it and
6 he said it was okay.

7 Q. To your knowledge were those charges repaid by Mr.
8 Smith?

9 A. Yes, ma'am, it was.

10 MS. SCHRICK: I don't have any further questions
11 at this time, Your Honor.

12 THE COURT: Redirect -- or recross-examination?

13 REDI RECT EXAMI NATION

14 BY MR. COX:

15 Q. Mr. Siddle, let me start with what you were just
16 talking about. Do you know whether Mr. Smith received a
17 W-2 or 1099 for these payments to him?

18 A. As far as I know, I don't think so. But I'm not
19 sure.

20 Q. When did you create these memorandums that we're
21 looking at, looking on, for example, the first page of
22 Exhibit 224? When did you create that?

23 A. I created this one June 14, 2010.

24 Q. And looking at this, it appears that, that this is
25 for the period of October 9th -- I'm sorry, October 2009

1 through May of 2010; is that correct?

2 A. Yes, sir.

3 Q. So that would capture all the bonuses for that
4 period?

5 A. Yes, sir.

6 Q. Okay. And if we look at this, we see payments to
7 him for various bonuses. I wanted to ask you, who's in
8 charge of the shipping there?

9 A. Well over -- that's Todd's responsibility, yes,
10 sir. That's Mr. Smith's.

11 Q. So it's Todd's responsibility to make sure things
12 are shipped correctly?

13 A. Correct. Yes, sir.

14 Q. And yet he got a bonus for correcting three -- I'm
15 sorry, 4,040 double shipments? Is that correct?

16 A. Yes, sir.

17 Q. That's where you ship things out twice?

18 A. No. What happens is that a, a patient's tray
19 comes across with all his meds in it. Sometimes their
20 meds get separated into two different trays.

21 Q. Mm-hmm.

22 A. And then all of a sudden we're shipping meds to
23 the same person, the same day, but two different trays,
24 which means double the cost in postage. So his job was to
25 double check to make sure we weren't shipping twice to one

1 patient in one day. And he put those into one box and
2 then, and then backed out the postage for that one box.

3 Q. And so that was his job, right, to catch those?

4 A. Well, he had staff underneath him was supposed to
5 do it. His job at the end of the day, to make sure that
6 wasn't going to happen.

7 Q. Okay. But that was part of his regular job;
8 right?

9 A. Yeah. Yeah, it was.

10 Q. Okay. And he was paid for that, his job, right?

11 A. Yes, sir.

12 Q. But here you are giving him a bonus for actually
13 doing his job; right?

14 A. His job was to oversee his staff to make sure they
15 did that. And, yeah, he was getting a bonus to make sure
16 they did it.

17 Q. So would this reflect all of the, all of the
18 commission -- I'm sorry, bonuses that he would have been
19 entitled to for the period October '09 through May 10th of
20 2010? October '09 to May 2010?

21 A. Yes.

22 Q. All of them?

23 A. Yes, all of them.

24 Q. Okay. If you would turn to the second page. So,
25 this is January of '09. Are these previous bonuses that

1 were paid to him at that time?

2 A. Yes. On that date I turned around and paid him, I
3 mean, Alisha paid him for that commission for that, for
4 that time period, yes.

5 Q. Okay. So what I want to make clear here is that
6 this commission was paid to him back in January of '09;
7 correct?

8 A. Correct.

9 Q. Yeah, that was long before the idea of the trip
10 came about; right?

11 A. Yes.

12 Q. Okay. Going on to February of '09, the same
13 thing, that was paid to him in February of '09, was not
14 applied to the trip, just paid to him; correct?

15 A. Yeah, this was an, examples of the different memos
16 that went out.

17 Q. Same in May of '09; correct?

18 A. Which page? Where are you at?

19 Q. Page four.

20 A. Oh.

21 Q. It was paid to him at that time, was not credited
22 toward the trip; right?

23 A. That is correct.

24 Q. You said that Mike's testimony was accurate, I
25 believe. Mike testified that Mr. Smith paid this back in

1 cash. Did you ever see any cash?

2 A. No, sir. He didn't.

3 Q. Okay. Now then, so you said the total amount of
4 the trip was \$6500; right?

5 A. I said, yeah, right around for both trips.

6 Q. Okay. And so it looks like he applied 3435. Did
7 he pay cash for the rest of it?

8 A. No. He withheld another one of his bonuses he was
9 supposed to get.

10 Q. Where is that?

11 A. I -- I'm sure that back, back in my computer, I
12 just printed some stuff out to show what was happening
13 back then.

14 Q. So we don't have anything here to show what he,
15 where he came up with the difference between the 3435 and
16 the 6500?

17 A. No, sir, not right here. No.

18 Q. All right. Now then, Exhibit 9, please? Turning
19 to page -- let's see here -- 49, please. Do you have that
20 page, sir?

21 A. Yes, I do.

22 Q. Okay. This is the statement for Central. Looking
23 at the, for the period ending December 31, 2005, do you
24 see that? The right-hand column?

25 A. I must be -- I'm on December 31st, 2007. Am I on

1 the wrong page? I'm on page -- wait a second.

2 Q. I'm sorry. My mistake. It's the handwritten
3 number 34. I'm sorry.

4 THE COURT: Handwritten 34?

5 THE WITNESS: Not 49?

6 MR. COX: Yes. That's correct. That's my
7 mistake. I apologize. Handwritten page 34.

8 THE COURT: This is entitled Medicate Pharmacy
9 Central income statement? Is that what you are looking
10 at?

11 MR. COX: Yes, sir.

12 Q. (BY MR. COX) And in the right-hand column, let's
13 see, I just want to go through you how, with you how this
14 works, okay? So we have sales, and the total sales for
15 2005 were 3.2 million, rounded; is that correct?

16 A. That is correct.

17 Q. And then we take off, in the next group we take
18 off the cost of goods sold, and that was 2.1 million;
19 correct?

20 A. That is correct.

21 Q. And then we get the gross profit, which is 1.1
22 million; right?

23 A. Yes, sir.

24 Q. Then we subtract off all of the operating
25 expenses, which were \$726,000; is that correct?

1 A. On page 34 to 35, yes, sir.

2 Q. Yes. And then we are left with a income, net
3 income of 382,000; correct?

4 A. That's correct.

5 Q. And then that would be divided up, you'd get 10
6 percent, Mark 40, and Mike 50; is that correct?

7 A. No, sir. This is for the Pharmacy of Medicate
8 Central, this is not for just the mail order.

9 Q. Oh, so this includes both the mail order and the,
10 and the regular pharmacy?

11 A. This includes Medicate Central Pharmacy, all their
12 financials.

13 Q. And the mail order.

14 A. Yeah, mail order's in there. Yes, sir.

15 Q. Okay. So if we want to know how to break it out,
16 we would have to have a separate statement; right?

17 A. Yeah, those -- that's that -- that exhibit I did
18 on the invoices for what that cost of the mail order was
19 doing within that pharmacy.

20 Q. Well, let's take a look here now. Let's see, I
21 want to find the right page that Miss Schrick was going
22 over with you. If we go to Exhibit 8?

23 THE COURT: Exhibit 8?

24 MR. COX: Yes, Exhibit 8.

25 THE WITNESS: 8.

1 Q. (BY MR. COX) This is 34. Is this the page she
2 reviewed with you? Page 34?

3 A. Earlier she did, yes, that's on the DeliverMed
4 mail order.

5 Q. Right. This is just the mail order part of it;
6 correct?

7 A. No, sir.

8 Q. This isn't for the mail order portion of the
9 business?

10 A. What this is for, is all the things that our
11 bookkeeper could see as a piece that only deliver, only
12 the DeliverMed mail order actually did. This is not like
13 there -- that's all that was.

14 Q. Well, the mail order --

15 THE COURT: Hold on a second. I don't understand.

16 MR. COX: I don't either. That's what I was going
17 to ask.

18 THE COURT: Try again.

19 Q. (BY MR. COX) You heard Larry Junior testify that
20 he kept the books and records of the mail order separate
21 for a period of time; correct? Did you hear that
22 testimony?

23 A. Yes, I can tell you what I, what I thought they
24 were doing.

25 Q. The question is -- no, that's not my question.

1 Did you hear him testify to that? That he kept these
2 separate for the mail order?

3 A. Yes, I remember that.

4 Q. And that he would keep track of, of, of the, of
5 this and used it to obtain a net profit; correct?

6 A. I'm not sure if I heard him say that.

7 Q. Well, let's go through it. He, he records here
8 sales for the mail order portion of the business 1.7
9 million, and then they deduct off the cost of goods sold,
10 1.2 million, for a gross profit of 550,000. Then they
11 deduct off operating expenses and come with a net income
12 of \$404,087. And that is the figure that you would be
13 entitled to 10 percent of; correct?

14 A. No, sir.

15 Q. So this is not the accurate net income for that
16 period?

17 A. If I understood this, all they were trying to do
18 is figure out what exactly the cost of the mail order
19 within the pharmacy was. These P and Ls, I never saw,
20 except once or twice, because they were just trying to get
21 an idea of what this is costing. They didn't --

22 Q. Okay. In order --

23 A. -- find it -- they didn't -- all this was was
24 pieces taken out of Central and put it here. But all of
25 these numbers were in Central's.

1 Q. So in order to get a true picture of what the mail
2 order business is doing, what the true net profit is, you
3 would have to deduct off \$7 per prescription from this to
4 arrive at the real net profit. Is that what you are
5 saying?

6 A. Now, if these numbers, they would have had to put
7 in things like the insurance payments to, you know, health
8 insurance and all these other divisions over there.

9 Q. Okay. So you wouldn't take just a \$7 and write
10 that off of the net profit, you would actually go in and
11 plug in the actual expenses attributable to the mail order
12 and put them in here, wouldn't you?

13 MS. SCHRI CK: Objection, Your Honor, as to
14 foundation. He didn't prepare these, he doesn't, you
15 know, that is not his --

16 THE COURT: Well, I'm trying to figure out what
17 this witness, how he figures what his, his, what his,
18 where his 10 percent draw comes from.

19 MR. COX: Yes, sir, I agree. I -- you know,
20 we've, we've talked about --

21 THE COURT: I'm going to overrule the objection
22 because I don't know -- I mean, we have a bunch of
23 financial statements and everything and I don't know where
24 Mr. Siddle, whether there's a document that shows you
25 where your 10 percent comes from or not.

1 Q. (BY MR. COX) Yeah, in other words, just to
2 figure, to figure your, your 10 percent of the net income
3 we have to deduct off the expenses. And what I hear you
4 say is that all of the expenses aren't on here. We would
5 have to go someplace else and draw some of those expenses
6 over here to get a different number. Is that what you are
7 saying?

8 A. Yes. I put together every month a invoice just
9 showing how much was coming in for the mail order, how
10 much was basically going out for cost of goods. And the
11 overhead of all, what we figured at \$7 per scripton for
12 all overhead, that's the number, that's the document that
13 tells me what my 10 percent is. Now, out of my 10 percent
14 we have to take care of marketing, but that's the
15 document.

16 THE COURT: Has that document been admitted into
17 evidence?

18 MR. COX: In fact, we had talked, we had shown
19 that as an invoice, as an exhibit, when I talked with him
20 earlier and I asked him to explain all that, where he was
21 deducting off the \$7.

22 Q. (BY MR. COX) But what I'm saying is, when we look
23 at this document, which were prepared by the accountants
24 for the firm, we don't see that deduction of \$7, do we?

25 A. No. This was just a reflection of what Alisha,

1 who is the bookkeeper, I look -- was told. Would you
2 please, if there's a bill that you know for a fact is only
3 for mail order, make sure that Schaltenbrand and
4 Schaltenbrand knows, because we gotta kind of get an idea
5 if this \$7 is even close to what we're trying to figure
6 this whole thing out.

7 Q. So they put --

8 A. And they put -- and they put these doc -- they put
9 those numbers not on a spreadsheet but on a financial.

10 Q. So the only person that was creating a document
11 that reflected this \$7 being deducted off was you;
12 correct?

13 A. I was the only one, that was my responsibility, to
14 come up with a document every month that showed our sales,
15 adjudicated revenue, that shows our cost of goods for that
16 mail order, and it shows that \$7 that we three agreed to,
17 we think that's what we should charge for, to complete
18 that overhead so we know what the pharmacy has to get
19 money back for what they are doing.

20 Q. So you --

21 A. I was the one --

22 Q. Answer the question.

23 A. I'm sorry.

24 Q. You're the only person that was doing that; right?

25 A. Yes. And every month I e-mailed --

1 Q. Thank you. That's the end of the question.

2 A. Sorry.

3 Q. Now the next part -- the next part is --

4 A. Sorry.

5 Q. Just relax. It's okay. The next part is that the
6 accountants were not doing that at all, were they?

7 A. Sir, I didn't even know the accountants were
8 separating this until several months after that.

9 Q. Well you, you have looked, you have looked at the
10 Central financial statements. You saw those, didn't you?

11 A. Yes, sir.

12 Q. You don't see the \$7 there anyplace, do you?

13 A. No. It wouldn't be there.

14 Q. No. And you didn't even know that Larry Junior
15 was keeping separate records for the mail order? They
16 didn't show you these?

17 A. Not on December 31st, 2005, no.

18 Q. When did you first learn that these existed?

19 A. I would almost say probably in the middle of 2006,
20 I actually saw a copy sitting --

21 Q. Okay.

22 A. -- in our office.

23 Q. So you saw it and you saw the \$7 wasn't on there;
24 right?

25 A. I didn't go through it, I just saw it.

1 Q. You didn't read it?

2 A. No. That wasn't -- my job was to put together an
3 invoice every month and let everybody know what the
4 cost --

5 Q. So you didn't go to the financial records to get
6 the information to create your invoice?

7 A. No. Not there, no, sir.

8 Q. Mm-hmm. Who did you share the invoice document
9 with that you created?

10 A. I e-mailed Mike Schaltenbrand and Mark Swift.

11 Q. That's the only people you showed it to?

12 A. And Alisha. I gave it to her, a copy -- I made a
13 copy and gave a copy to her.

14 Q. Three people you showed it to.

15 A. Yes.

16 Q. How many employees does Central have separate --
17 let's go back to -- let's go back to this time of December
18 of '05. December '05. How many employees did Central
19 have that were not part of the mail order business?

20 A. I'm not sure how to answer that because in, in,
21 like let's say in retail all of a sudden we get hit with a
22 bunch of people, so we would move some of the people in
23 the back to help them out. So we'd move people back and
24 forth like that. So who only, only did mail order, let me
25 think a second. (Pause.) Probably one guy in shipping

1 who didn't do anything for retail except take out their
2 trash. (Pause.) That only did mail order? Probably two,
3 two or three.

4 Q. How many -- my question was, how many did you have
5 that did not do mail order?

6 A. That totally did not do mail order? Two.

7 Q. Give us some sense if you would of the size of the
8 facility there in Washington Park. How big is it?

9 A. At that time or right now?

10 Q. At that time, back in December of '05.

11 A. Square footage?

12 Q. Well, just give us a sense of the size of it, if
13 you would. Is it as big as this room?

14 A. Oh, no, no, no. You would have a, a front retail
15 where people come and sit down, it's a small room about
16 the size of that. And then you had --

17 Q. Jury box.

18 A. Yeah. And then you had a pharmacist behind like a
19 wall like that, and he's doing his meds. And you had a
20 tech right there. And you had a guy who was, a lady who
21 was checking people out. That's the front side.

22 And there was an office right to the side of there
23 where Alisha and I sat. And then behind us is a bathroom.
24 And then there's a small room that we kept some meds and
25 stuff in. And the next room over was a room for all the

1 shipping, which is -- the shipping room was probably a
2 fourth of this room, and that's where you had the robot
3 and a pharmacist checking the meds and two shipping guys
4 and all those boxes. And then a room about that same size
5 in the back where we had -- 2005? That's all there would
6 be.

7 Q. Okay. These memos about bonuses to employee -- to
8 this employee Todd Smith were not produced in discovery,
9 they were produced just this week; correct?

10 A. Yes, sir.

11 Q. And did you give any bonuses to anybody else?

12 A. At that time, yes, sir.

13 Q. Who else got bonuses?

14 A. Off the top of my head, Faye Johnson -- at what
15 time, sir?

16 Q. Back at the time Mr. Smith's getting his bonuses.

17 A. There was only two people, Faye Johnson and Todd
18 Smith.

19 Q. Let's look again at this invoice that we had been
20 talking about.

21 MR. COX: 91, Judge.

22 THE COURT: 91?

23 Q. (BY MR. COX) And this is the invoice we had
24 talked about earlier as an example of what you had been
25 doing. And I think you said you shared this with Mike and

1 Alisha and Mark; correct?

2 A. Yes, sir.

3 Q. You didn't share it with the Schaltenbrand
4 accounting firm; correct?

5 A. No, sir.

6 Q. And these numbers, we look here, show revenue.
7 And where did you get that number of revenue for this
8 particular work?

9 A. That's an adjudicated number.

10 Q. Where, where did you get it?

11 A. I'm sorry, the software told me that.

12 Q. The software told you that.

13 A. Mm-hmm.

14 Q. Okay. It'll tell you how many patients you ship
15 to. Is this for a month?

16 A. For a month, yes, sir.

17 Q. Okay. And then we see acquisition cost --

18 THE COURT: This was for the month of August 2005?

19 THE WITNESS: Yes, sir.

20 MR. COX: Yes, August of 2005.

21 THE COURT: It was generated on September 1, 2005.

22 THE WITNESS: That is correct.

23 Q. (BY MR. COX) And this would have been actually
24 the first month you were in operation; right?

25 A. Yes, sir.

1 Q. Mm-hmm. And so then you, so you take then off the
2 cost of goods. Where do you get that number?

3 A. The cost of goods is when you pull the report up,
4 it will tell you what the, the sales number or the
5 adjudicated revenue, and then it would show the cost of
6 goods at the bottom, what the, what the computer told you
7 that the cost of goods was.

8 Q. Now over on page 34, we see that, of Exhibit --

9 A. I, I closed it. I'm sorry. Exhibit 8?

10 Q. Page 34 of Exhibit 8, the one we were looking at.
11 So far you are tracking the way Larry Schaltenbrand was --
12 Junior was doing it. And then we -- he -- after the cost
13 of goods is obtained you get the gross profit. And then
14 he starts subtracting operating expenses. Do you see
15 that?

16 A. On -- over here? 34?

17 Q. Yes, sir.

18 A. Yes.

19 Q. But on your chart that you have created here, you
20 don't subtract the operating expenses, do you? You just
21 subtract this 7-dollar overhead cost; correct?

22 A. That's operating expense.

23 Q. Right. But you don't, you don't capture the
24 expenses that Mr. Schaltenbrand has done on his accounting
25 sheet here, do you?

1 A. No. I wouldn't, I wouldn't do that, no.

2 Q. So you wouldn't even count those operating
3 expenses, you just go straight to the \$7 as covering all
4 expenses; correct?

5 A. Yeah, we were just trying to capture what it would
6 cost --

7 Q. Okay.

8 A. Yeah, that's all. Yeah, I mean, they captured
9 that \$7 to capture all expenses except marketing.

10 Q. Have you ever worked as an accountant?

11 A. No.

12 Q. Studied accounting?

13 A. No.

14 Q. Anything like that?

15 A. No, sir.

16 Q. All right. Very good.

17 MR. COX: Those are all the questions I have,
18 Judge.

19 EXAMINATION

20 BY THE COURT:

21 Q. Before you get off -- so as I understand it from
22 your testimony, your 10 percent would be taken off the
23 2700 -- looking at Plaintiff's No. 91, the 2721.29, you'd
24 get 10 percent of that?

25 A. Yes. We still have some marketing cost that's not

1 in there but that would, 10 percent of that would be mine,
2 yes.

3 Q. Well then you say -- I'm still confused as to
4 where, how you figure -- when you receive money from this
5 business, there had to be some kind of document or report
6 that showed you how much you were owed. Isn't that not
7 true?

8 A. That's true. And we got one.

9 Q. You got one? Where is it? Because if you say
10 that this is -- this still isn't correct, that you still
11 have some more to take off of here. Where is it?

12 A. I would send these to Mark. And then about,
13 starting in '06, Mark would send an e-mail saying, I have
14 calculated all the revenue coming in and I have looked at
15 Joe's stuff, and we should start splitting 45,000 a month.
16 And we split up the percents off of that.

17 It was like, kind of like a draw number that he'd
18 come up with a number. And then Mike would go, we can't
19 do that, we don't have it in the checking account. Then
20 all of a sudden he'd go, well, we need to start splitting
21 something. And then Mark would go, let's at least split
22 30,000 then. And finally Mike would say, okay, let's
23 start splitting 30,000 and we'll figure it out later.

24 Q. Well, where did this 30,000 -- is there a document
25 that would show there was a 30,000 that needed to be split

1 someplace or was that just --

2 A. That was --

3 Q. -- in Mark's head?

4 A. Mark told us that that's how much he perceived
5 that we were making as a mail order business and we should
6 start splitting up profits. At first, Mike did not want
7 to do that. He said, we gotta pay back the loan.

8 Q. Okay. So, so what you are telling me is that
9 neither -- this Court should not consider either
10 Plaintiff's 8 or Plaintiff's 91 in determining what the
11 true accounting of the division of profits was for
12 DeliverMed, the mail order business?

13 A. That's correct.

14 Q. So none of these documents are accurate?

15 A. No. We just found -- and we found out at the end
16 that we took way too much money.

17 Q. Okay.

18 MR. COX: Just a, just a brief followup.

19 THE COURT: Followup.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. COX:

22 Q. But Exhibit 91 was created completely by you, all
23 these invoices; correct?

24 A. Yes.

25 Q. And these financial statements were created

1 completely by Schaltenbrand and Schaltenbrand accounting;
2 is that correct?

3 A. That is correct.

4 MR. COX: All right.

5 THE COURT: Miss Schrick.

6 MS. SCHRICK: Thank you, Your Honor.

7 RE CROSS-EXAMINATION

8 BY MS. SCHRICK:

9 Q. Okay. Mr. Siddle, we're going to have a few more
10 things to talk about now. In the very beginning, what was
11 the idea behind the mail order business, just the basic
12 idea?

13 A. Was to be able to bring patients in and sell those
14 patients off to somebody.

15 Q. Okay. In the beginning was there any discussion
16 about sharing profits or splitting distributions or
17 commissions?

18 A. The very beginning, there wasn't. We were trying
19 to build a business and sell it off. That didn't happen
20 until later.

21 Q. Okay. Who was going to be doing the selling?

22 A. Mark had an idea to be able -- he had the
23 telemarketing, Mark was going to get us the patients, and
24 then he was going to try and find somebody to buy it.

25 Q. Okay. Did he do that?

1 A. No. He didn't do that, no.

2 Q. Okay. And then I think you testified previously,
3 there was times when after that didn't happen he started
4 suggesting people take distributions or commissions; is
5 that right?

6 A. That's correct. About three or four months into
7 it, yes.

8 Q. Okay. Now, what was your understanding of the
9 agreement for how the commissions or distributions were
10 going to be calculated?

11 A. The very beginning, Mike had told both of us that,
12 there's no, not going to be any distributions or any type
13 of split, any type of profits, until all the telemarketing
14 is paid for. And then after a couple months Mike -- Mark
15 wanted money, so Mark basically said, listen, guys we're
16 going to sell this whole thing, let's just put the
17 marketing money into the bank loan and we'll pay that off
18 first. We sell this business for \$26 million and then
19 we'll split everything after that. So let's start
20 splitting some money every month.

21 So, he come up with a figure. I think we're doing
22 this much. I think, I think we're, our profit should be
23 about 35 -- \$30,000 a month, so let's split 30,000. So
24 he'd take 30,000 on his e-mail and go, okay, out of 30,000
25 Mark, Mike, you'd get, if that's the number you get 15,000

1 and then he's say make sure Alisha cuts these checks --

2 THE COURT: Can you slow down a little bit?

3 THE WITNESS: I'm sorry.

4 THE REPORTER: Thank you.

5 THE COURT: The court reporter has a stun gun down
6 there. I can see it.

7 (Off the record.)

8 Q. (BY MS. SCHRI CK) Okay, Mr. Siddl e, so we talked a
9 little bit kind of about the concept. When the commission
10 started being paid out, what was your understanding of the
11 agreement as to how those numbers were being calculated?

12 A. My -- how I was thinking when I got the document
13 from Mark saying we should split 30,000, in some cases
14 100,000, I asked him, where are you getting this number?
15 Because according to my numbers, that's not adding up.
16 He'd say, oh, Joe, he goes, I think your numbers are
17 wrong. There's a lot more profit coming into this
18 pharmacy for the mail order. I think you're totally
19 wrong, Joe, I'm serious, more money is coming in.

20 I'm like, well, he's an accountant. Okay. And
21 obviously I should have stopped it but I thought, well,
22 I'm getting 10 percent of whatever you all are splitting
23 so they, so Mike -- Mark would say, we're going to split
24 at one time 60,000, and 100,000 a month, and then, and
25 then Mike would look at the checking account and go, well,

1 we have enough in there. So they would, they would cut
2 checks and I'd get 10 percent of whatever that number Mark
3 came up with.

4 Q. Okay. Let me ask you this, Mr. Siddle, turning to
5 Exhibit 91 -- do you have that in front of you? That's
6 the invoice that you prepared.

7 A. Yes, ma'am.

8 Q. And this is just a representative invoice;
9 correct?

10 A. Yes, ma'am.

11 Q. You prepared them monthly. And you sent them to
12 Mr. Swift and Mr. Schaltenbrand monthly?

13 A. Yes.

14 Q. Okay. Now, you testified earlier that there was
15 some inaccuracies with this. What, if anything, is not
16 reflected on this document?

17 A. The only thing it doesn't reflect here is the, the
18 telemarketing costs that we were accruing, that the
19 pharmacy was paying for.

20 Q. Okay. And what was your understanding of the
21 arrangement as to when those telemarketing costs were
22 going to be paid for by mail order, so to speak?

23 A. At the very beginning, we were supposed to pay
24 that off first before we split any type of profits.

25 Q. Okay. What if the mail order was sold, what would

1 happen?

2 A. I was told that if we find someone to buy all the
3 patients, we would transfer the patients to them, and then
4 whatever the amount was, the first thing Mark said we
5 promise that we will pay off that loan at the bank and
6 then we'll pay off what we have to pay off and then we'll
7 split the difference. And I'd get 10 percent of whatever
8 it was.

9 Q. Okay. So despite the fact that doesn't reflect
10 the bank loan or the marketing expense, this total net
11 profit number is accurate to the best of your knowledge?

12 A. Yes, ma'am, it is.

13 Q. And would that be true of your other monthly
14 invoice?

15 A. Yes, ma'am.

16 Q. And this monthly invoice does reflect the \$7 per
17 prescription overhead charge; correct?

18 A. Yes, ma'am.

19 Q. Okay. Why did you use \$7 per prescription instead
20 of trying to come up with actual numbers?

21 A. Since we were using a pharmacy, we weren't sure
22 what that number was. Like, okay, all that overhead, how
23 do we calculate what we charge back to that department?
24 And so all three of us said, we think \$7, because we have
25 all the shipping costs, everything. So they -- we came up

1 with the number 7.

2 Obviously later on we found out that that number
3 probably wasn't right because we weren't sure. We were
4 guessing.

5 Q. And just to be clear, this Washington Park
6 facility, how many business operations are going on there?

7 A. Four.

8 Q. Four. Okay. And would mail order be one of
9 those?

10 A. Yes.

11 Q. And then --

12 A. Retail.

13 Q. Retail.

14 A. Hospice.

15 Q. Okay.

16 A. And we had a long term care facility that we sent
17 them meds, and that was a different department.

18 Q. Okay. And in terms of hospice, retail, and long
19 term care, would that all fall under Central?

20 A. Yes.

21 Q. Okay. Mail order was also part of Central?

22 A. Yes.

23 Q. Okay. You, your invoices, reflect the mail order
24 numbers?

25 A. Yes.

1 Q. They don't have anything to do with these other
2 business operations?

3 A. That's correct.

4 Q. Okay. But all of those are in the Washington Park
5 physical building?

6 A. That's correct.

7 Q. Okay. How many rent bills does the Washington
8 Park physical building receive?

9 A. One.

10 Q. How many electric bills?

11 A. One.

12 Q. Would that be true of all of its overhead, so to
13 speak, expenses?

14 A. Yes, ma'am.

15 Q. Okay. Did the mail order financial statements
16 reflect all of those overhead expenses?

17 A. No, ma'am.

18 Q. Okay. What was the purpose of the \$7 in that
19 context?

20 A. The \$7 in that context, we were just trying to
21 figure out what our cost was for our portion of overhead
22 as a mail order.

23 Q. Okay. You said you gave your invoices to Alisha,
24 the bookkeeper?

25 A. Yes.

1 Q. Do you know what she did with those invoices?

2 A. I'm not sure.

3 Q. Do you remember when Mr. Cox asked you about the
4 revenue number, and the revenue number in the financial
5 statements?

6 A. Yes.

7 Q. Was it your testimony that those numbers
8 corresponded?

9 A. I'd have to look. I apologize. I'm not sure if
10 we're talking about the same thing. I'm not sure.

11 Q. Okay.

12 THE COURT: Question: Do you -- Exhibit No. 91,
13 do you have these for every month?

14 THE WITNESS: I have every month until the end of
15 2007, yes, sir.

16 MS. SCHRICK: We're getting there right now, Your
17 Honor. If I may approach Mr. Siddie?

18 THE COURT: Yes.

19 MS. SCHRICK: This is Exhibit 153.

20 Q. (BY MS. SCHICK) Mr. Siddie, I have just handed you
21 what's been marked as Defendant's Exhibit 153. Do you
22 have that?

23 A. Yes, I do.

24 Q. Okay. And can you tell me what this is?

25 A. The first page?

1 Q. Well, what is this exhibit? What is this?

2 A. What this was, I was asked to put together what
3 exactly the, the, the revenues for each one of those
4 years. And I was told to try to figure out exactly what
5 the profit would have been, and the distributions of all
6 the different, you know, moneys that was given out to Mike
7 and me, and all the sales for each month.

8 Q. Okay. Let me ask you this: Does this include all
9 of your invoices that we had just discussed, like Exhibit
10 91?

11 A. Yes. I see the first one and I see the last one,
12 the end of 2007, so they should all be there.

13 Q. Now, why were you preparing these invoices from
14 2005 to 2007?

15 A. Because I was told we -- I had to find out exactly
16 what the mail order part was doing and then report it back
17 to Mike and Mark.

18 Q. Okay. Who asked you to figure out and track these
19 numbers?

20 A. Mark and Mike.

21 Q. Okay.

22 A. And me.

23 Q. Okay. You wanted to know, too?

24 A. Oh, yeah.

25 Q. Okay. So let's look at Bate stamped page

1 Defendant's 5831, is that the same as Exhibit 91?

2 A. This one page?

3 Q. I think it spills over, right, on to the second
4 page? There's a column that kind of got cut off, the page
5 behind it.

6 A. This here?

7 Q. Exhibit 91, is that Defendant's 5831? Yes, that's
8 Exhibit 91, right? Okay. Can you compare that to Exhibit
9 Defendant's 153 and then in the bottom right-hand corner,
10 the part that says Defendant's 5831.

11 A. Yes, I see on the next page, it's the exact same
12 number.

13 Q. Okay. And that is an invoice that you prepared?

14 A. Yes, ma'am.

15 Q. And just to go through the process here, this
16 revenue number, where did you obtain that?

17 A. Basically the software told me what was
18 adjudicated that month for that.

19 Q. Okay. When you say adjudicated, tell me what that
20 means?

21 A. Whenever the -- I'll slow down.

22 Whenever the software submits a, what they call
23 adjudicated claim, in other words, it's saying to the
24 insurance company, you owe us this. And they kick back
25 within less than second, this is how much you are being

1 paid. That's what that's called. It's adjudicated
2 revenue. Doesn't mean we are going to get that back, it
3 just means we should get that back.

4 Q. So your computer bills insurance companies and
5 other providers an amount for the prescriptions?

6 A. The amount that they choose what it is but, yes.

7 Q. Well, you send out your number, right, and then
8 they tell you back --

9 A. Yeah.

10 Q. -- what they're going to pay?

11 A. So the software captures what that, that insurance
12 company says they're going to pay and that, that's what's
13 called adjudicated revenue.

14 Q. What the insurance company is going to pay?

15 A. Correct.

16 Q. Okay. So in terms of the revenue number, tell me
17 what these different entries mean. Third party --

18 THE REPORTER: Could you, could you start over and
19 please slow down?

20 MS. SCHRI CK: I'm sorry. Sure.

21 Q. (BY MS. SCHRI CK) In the revenue number, the first
22 entry is third party revenue without copay. What does
23 that mean?

24 A. The system told me that's how much you should get
25 back. Then there's a separate number for copay. In other

1 words, that's the number you should get back from the
2 patient. I didn't add that number in because we hadn't
3 gotten that amount back yet so I, I put that separate.

4 Q. Okay.

5 A. The next line -- do you want me to go through the
6 next line?

7 Q. Yes.

8 A. The next line is what copays we did collect. So,
9 out of \$664, we did collect \$245.

10 Q. Okay. So if I add the 245 to the 59,000 I get
11 your 60,217 on the next line?

12 A. Yes, ma'am.

13 Q. And that's what you have described as total third
14 party revenue?

15 A. That's correct.

16 Q. Okay. Then there's another entry in revenue;
17 right?

18 A. That's correct.

19 Q. The total MCA revenue?

20 A. Yes.

21 Q. What is that?

22 A. Medicare, when you bill Medicare, it's different.
23 They don't adjudicate. Medicare, you tell them how much
24 you want and they will tell you in 45 days if you are
25 going to get it or not. Because that patient could have

1 went to another pharmacy and billed for diabetic strips or
2 whatever it was, and they're not going to pay us. So I
3 can't use the adjudicated amount because most likely I
4 know I'm not going to get that total amount.

5 So the first line was, this is how much Medicare
6 was billed. The next line is what we collected. So we
7 did collect \$1,169 that month.

8 Q. Okay.

9 A. And so as you can see, all I added then was the
10 1,169.

11 Q. Okay. And if I add the third party revenue and
12 the MCA Medicare revenue, I get your total revenue number;
13 correct?

14 A. That's correct.

15 Q. Okay. And then from that you subtract out your
16 cost of goods sold?

17 A. That's correct.

18 Q. Okay. And then you subtract out the \$7 per
19 prescription?

20 A. That's correct.

21 Q. Okay. Now, where were these revenue streams
22 coming into? What, what entity or what account?

23 A. It was all coming into Medicate Central
24 Pharmacy's, into the checking account or a check was made
25 and we deposited, they deposited it into the checking

1 account of Medicate Pharmacy.

2 Q. Okay. So why did we need this invoice then?

3 A. Because we -- the -- when the money come in they
4 don't, they don't tell you what that came from. Like that
5 came from mail order or that came from this. So all we
6 had was that number. So we're hoping that number is
7 correct. But that's the only number we had, so we had to
8 hope that that's what came in.

9 Q. So to get that number would it be correct that you
10 pulled from your computer system information on the
11 prescriptions that were mail order patients and totalled
12 them up?

13 A. Yeah, we actually, on every patient we gave them a
14 name so we knew when that, our system would tell us
15 because we identified each patient, what patient it was,
16 hospice or long term care, retail, you know, or mail
17 order. We gave it names. So every patient had an
18 identifying name to it.

19 So the software then would tell me, well, you
20 know, out of that money you guys adjudicated for the whole
21 pharmacy, \$59,000 was just mail order. The system would
22 know that because we gave it the correct names.

23 Q. Okay. Then down at the bottom there's an entry
24 that says WP to DM. Do you see that?

25 A. Yes, ma'am.

1 Q. What does that mean?

2 A. At the very beginning the concept was, we had a
3 separate checking account for DeliverMed mail order. What
4 we were supposed to do, and this is why I gave this
5 document to the bookkeeper, what was supposed to happen
6 was they were supposed to write a check to DeliverMed's
7 checking account for 61,000 and some change. Then --

8 Q. Can I stop you right there, Mr. Siddle?

9 A. Yeah.

10 Q. Why were they going to do that?

11 A. Because we had to make sure we separated the
12 funds. We had to make sure that we -- that's how much we
13 think was, that was mail order's portion.

14 Q. So you got one check from whoever the provider was
15 into Central, some of that was for retail, some of that
16 was for mail order, some of that was for other things?

17 A. All coming in.

18 Q. Okay. But this is the number that you are asking
19 Central to give to mail order?

20 A. Correct.

21 Q. For the mail order money?

22 A. That's correct.

23 Q. Okay. And then you were going to write a check
24 from DM, which would be the mail order?

25 A. So the mail order was supposed to write a check

1 back to the pharmacy for cost of goods sold. Then they
2 write another separate check for the overhead cost of \$7 a
3 scription. At this time that was 9,380. So they were
4 supposed to write another check back to them. That way,
5 the only thing that was in that checking account was
6 \$2,721, and then that would -- every month that would be
7 in there. And then we would take, you know, whatever out
8 of there like telemarketing money. Or if we would have
9 split money up, we could take it out of there.

10 Q. Okay. And so that 9380 that's showing on this
11 invoice, that's the total of the \$7 per prescription for
12 all the prescriptions that month.

13 A. Correct. Because the software told me how many
14 prescriptions that month mail order did, which was 1,340
15 that month.

16 Q. Okay. And I think you told me you prepared these
17 invoices through 2007; is that right?

18 A. That's correct.

19 Q. Okay. Are the totals of those invoices reflected
20 on the first page of Exhibit 153?

21 A. If you look to the very right column, it would
22 show you the total DM revenue for that -- are you talking
23 about the first page here?

24 Q. Right. Your summary sheet?

25 A. Oh.

1 Q. The first page?

2 A. Yeah, that's a summary sheet for all four years
3 but that was -- yeah, that would actually show. On the
4 right side it would show 2005 and how much the revenue
5 was, \$1.8 million for, off of my invoices what we actually
6 did.

7 MR. COX: Your Honor, show my objection without a
8 foundation as to who created this particular document,
9 that's the first page.

10 THE COURT: Who created this?

11 Q. (BY MS. SCHRICK) Mr. Siddle, tell me about the
12 first page. Who --

13 THE COURT: You're talking about this page;
14 correct?

15 MS. SCHRICK: I am, Your Honor.

16 Q. (BY MS. SCHRICK) The first page of Exhibit 153,
17 Mr. Siddle, who prepared that?

18 A. I prepared that.

19 THE COURT: Okay.

20 Q. (BY MS. SCHRICK) Tell us how you prepared it.

21 A. Mark would send us a document here and there. It
22 looked something like this. After several years, I
23 realize he was showing how much profit we were getting.
24 And he was taking his numbers from this spreadsheet and
25 how he kind of figured why we should be splitting whatever

1 that was that month.

2 And so I finally started taking apart his
3 spreadsheet and realized that he wasn't using a net profit
4 of 9 percent or 12 percent or 10 percent, that my
5 spreadsheet --

6 THE COURT: I -- you're not answering her
7 question, but I have a question. Do you have a copy of
8 the spreadsheets that Mr. Swift sent you --

9 THE WITNESS: Yes.

10 THE COURT: -- that you -- is -- that you used to
11 create this document?

12 THE WITNESS: He first created. All I did was
13 change the numbers that were correct. He wasn't using
14 real numbers. I put -- so I totally redid the spreadsheet
15 and I put the real numbers in, that I know that happened
16 in the pharmacy.

17 Q. (BY MS. SCHRIK) So, Mr. Siddie, would it be fair
18 to say this is a format that Mr. Swift created?

19 A. Correct. It was a format that I actually then
20 changed to correctly represent exactly what was happening
21 in the mail order side.

22 Q. The substantive numbers on this spreadsheet, whose
23 numbers are those?

24 A. Those are all my numbers and it came from the
25 software and it came from the pharmacy.

1 Q. Okay. Are the backup for those numbers part of
2 this Exhibit 153?

3 A. Right. Everything on this first page is totally
4 backed up, and all these sheets after it.

5 Q. Okay.

6 MS. SCHRICK: Does that help, Your Honor?

7 THE COURT: Yes.

8 MS. SCHRICK: At this time we would move for the
9 admission of Exhibit 153.

10 MR. COX: I object. I don't think they can move
11 to admit an exhibit in our part of the case.

12 THE COURT: Well, they have been doing it all, for
13 the last several days.

14 MR. STINE: I guess he liked those.

15 MR. COX: I'd like to cross-examine, first.

16 THE COURT: It will be admitted subject to
17 cross-examination.

18 Q. (BY MS. SCHRICK) Okay. Mr. Siddie, you talked
19 about a separate bank account. Are you aware of a U.S.
20 Bank account for the mail order business?

21 A. Through the proceedings, yes.

22 Q. To your knowledge was that account ever used in
23 the mail order business?

24 A. Not at Washington Park, no.

25 Q. Okay.

1 MS. SCHRICK: I think that's all I have for now,
2 Your Honor. Thank you.

3 THE COURT: Mr. Cox.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. COX:

6 Q. Mr. Siddler, who were the three partners in this
7 mail order business?

8 A. Mike, Mark and I.

9 Q. Okay. And the three of you were entitled to a
10 percentage of the net profit; is that right?

11 A. Yeah. Everything's paid for, we should be, yes,
12 sir.

13 Q. Okay. Let's take a look at page one of Exhibit
14 153. We have Mike, Joe and DeliverMed. But not Mark.
15 Where is Mark?

16 A. Mark is DeliverMed.

17 Q. Well, DeliverMed meaning the mail order business?
18 Or DeliverMed Holdings LLC, meaning a corporation that's
19 doing the marketing? Which one?

20 A. DeliverMed LLC, that's who Mark is.

21 Q. So you think that Mark is the same as the
22 corporation that he and his family own?

23 A. Well, a lot of his commissions or a distribution,
24 what you call that, was actually transferred, wire
25 transferred, the exact same amount, it's the same account,

1 every month. Once he got a distribution --

2 Q. But Mark individually is the partner, isn't he?
3 Not DeliverMed.

4 A. At the very beginning when we started this, Mark
5 came in with DeliverMed. That was him. Okay? He had a
6 concept. Okay? It was DeliverMed.

7 Q. Well --

8 A. Mike had a pharmacy --

9 Q. Just a minute, sir. I'm just asking, you
10 testified that Mark was the partner individually, not the
11 corporation; correct?

12 A. Then why would Mark have us transfer --

13 Q. Is that correct, sir?

14 A. Yes, he's -- that's correct. That's what I said.

15 Q. All right. Now, you were telling us that you
16 created these numbers from all of these documents that are
17 underneath this; right?

18 A. That's correct.

19 Q. Including in those documents are invoices which
20 you have talked about; correct?

21 A. Correct.

22 Q. Any other doc -- types of documents that you have
23 used and relied upon in creating this?

24 A. Yes, sir.

25 Q. What types of documents would those be?

1 A. After 2007, starting in 2008 when we changed the
2 percents, then I had to use P and Ls of Medicate Central
3 to calculate the overhead.

4 Q. And did this 7-dollar charge stay on the whole
5 time or did it drop off at some point?

6 A. During the first, '05, '06, '07, that's how we
7 calculated it. But the problem was, we knew that the
8 adjudicated amount, we weren't sure that was really coming
9 in. And we weren't sure that the cost of goods was
10 totally collect. And the \$7, we were sort of guessing.
11 So Mark came up with the idea, well, wait a second, it's a
12 big piece of business now, let's redo the percents and now
13 we're going to deal with real numbers that are coming back
14 into the pharmacy for, you know, that patients --

15 Q. Well --

16 A. We changed the numbers.

17 Q. Okay, thank you. Just tell me what when that
18 happened.

19 A. It started happening in January 2008, we, we
20 changed the way we were doing things.

21 Q. I've gotcha. Okay. So then we see in here you
22 are relying on, it looks like some financial statements
23 from Schaltenbrand and Schaltenbrand and, and it looks
24 like you've got some other types of documents in here.
25 Did you assemble all these documents into this exhibit?

1 A. All these documents I, I, I copied, yes. I didn't
2 put the whole thing together like they did, but all those
3 documents, I gave them.

4 Q. And so you are saying if we look through all these
5 documents we're going to come up with your numbers that
6 are shown on page one?

7 A. We should, yes.

8 Q. Now, under the column DeliverMed you have shown
9 here, this would really be Mark's share; right?

10 A. That's correct.

11 Q. Okay.

12 A. Because he's DeliverMed.

13 Q. Okay. Well, he's not DeliverMed, isn't that
14 right? I mean, that's a corporation. Right? You
15 understand? You understand the difference between a
16 corporation and a sole proprietorship, we talked about
17 that in your tax return.

18 A. Yes, sir.

19 Q. So what you are talking about here is really
20 Mark's share; right?

21 A. Mark's share.

22 Q. Okay. So according to your calculations it looks
23 like, if you add all that up, that when we get to the
24 bottom here, can you tell me based on this period of 2005,
25 it looks like it goes through August of 2009, whether Mark

1 is owed any money for distributions?

2 A. He's not -- no, he's not owed anymore money, no.

3 Q. And, and you are not owed any money; right?

4 A. Ooh, no, I'm upside-down.

5 Q. Was Mark upside-down?

6 A. He's upside-down by \$690,294.

7 Q. So according to your calculations here, Mark's
8 been overpaid by \$690,000?

9 A. According to the profit of DeliverMed -- I mean,
10 not DeliverMed, the mail order portion, yes.

11 Q. All right. And as I understand it, you did not
12 use any of the financial statements of Schaltenbrand and
13 Schaltenbrand to create these numbers for the period 2005
14 through 2007; correct?

15 A. That's correct.

16 Q. Now, going back to my Exhibit 91, the way I
17 understand this, you have explained it is that the \$7,
18 looking at the bottom --

19 A. I apologize --

20 Q. 91? It's the one-page. It's your invoice, it's
21 just a one-pager.

22 A. I know. And I think I misplaced it. I don't know
23 -- I apologize, sir.

24 Q. Well, we'll find it. I'm sure it hasn't gone too
25 far.

1 A. Hold on, I think I might have put it inside this,
2 hold on, when I was looking at it and comparing it.

3 (Pause.) Yes, sir, I'm sorry. I put it inside here next
4 to the other invoice to match it up.

5 Q. So you're saying that, as I understand fund
6 transfers at the bottom, there would be a check going from
7 Washington Park to DeliverMed in a separate account.
8 Where was that account kept?

9 A. I just -- I have no idea. I just gave him the
10 number, what they were supposed to do.

11 Q. So you don't know where this bank account was?

12 A. No. I was just told to do that, and they were
13 going to figure all that out and open an account for that
14 piece.

15 Q. And, and Mike was the only person who could write
16 a check, wasn't he?

17 A. On what?

18 Q. On, on the Washington Park account.

19 A. Yeah, the Washington Park Pharmacy account, yeah,
20 he's the owner.

21 Q. And, and was he the only person that could write a
22 check on this DeliverMed account this was deposited into?

23 A. I'm not sure. I'm not sure. Because I found out
24 later they weren't doing that. The Pharmacy was not doing
25 what, what they were supposed to do.

1 Q. You mean, you are saying that they didn't write a
2 check from Washington Park to DeliverMed? Mike didn't do
3 that?

4 A. And then DeliverMed didn't write checks back to
5 Washington Park. It didn't happen.

6 Q. When you say DeliverMed here, we're of course
7 talking about the mail order.

8 A. Yeah, that's what we called it.

9 Q. Sure.

10 A. The mail order portion of it, yes.

11 Q. Just being clear. So there weren't checks being
12 written back and forth?

13 A. Later on, I found out it wasn't happening.

14 Q. Okay. So it was just all going into the pot, and
15 you didn't know what accounts they were going into.

16 A. Yeah but I kept my numbers, I kept my monthly
17 thing going.

18 Q. Sure. Okay. Then -- so these 7-dollar numbers,
19 we have been told in testimony so far that Larry
20 Schaltenbrand, Junior, created Exhibits 8 and 9 and these
21 various financial statements. That those financial
22 statements were then combined into combined financial
23 statement. And Mr. Schaltenbrand Senior would take those
24 tax return -- or these financial statements and, from
25 those financial statements, create the tax returns;

1 correct?

2 A. One piece that you are mistaken. They would take
3 Medicate Central and East St. Louis and combine them.
4 They never combined this Medicate DeliverMed one at all.
5 That was just --

6 Q. Let's just think on that for a minute. We were
7 told that in the Medicate Central financial statements, in
8 fact you told us this today, that that included both the
9 over the counter and the mail order, all combined into
10 one; right?

11 A. Yes, sir.

12 Q. So then all of that information for mail order and
13 Central would be combined with East St. Louis, it would be
14 put in a combined financial statement, and from that Mr.
15 Schaltenbrand Senior would create the tax returns. Is
16 that correct?

17 A. That is correct. I thought you were referring to
18 the DeliverMed P and L.

19 Q. And we know from looking at those financial
20 statements that were being used to create this tax return
21 that this \$7 does not appear in any of those; correct?

22 A. No, it wouldn't. No. No, sir. It does not.

23 Q. Okay. So, in creating the documents that are used
24 to create the tax returns, we see that that \$7 would not
25 have been used in calculating the taxes on this

1 corporation; correct?

2 A. Everything that \$7 represented, overhead,
3 insurance, is there. It's just, they're breaking it out
4 to the detail. All I was doing was trying to figure out
5 what we should charge to that department.

6 Q. Sure. And you have told us the \$7 was a guess;
7 right?

8 A. Yes, it was.

9 Q. So, if we want to know what actually happened, the
10 accurate expenses, not the guess of the \$7, we would need
11 to go to the financial statements, wouldn't we?

12 A. There are certain things that would be unplugged
13 from there to do that but, yeah, because the, the
14 financial statements included distributions or commissions
15 to Mike or Mark, and it included telemarketing, and it
16 included things that, that shouldn't be included within
17 that \$7 yet. It should not be there yet.

18 Q. But what we're seeing is, we want to know what the
19 real expenses of the business, the real overhead of the
20 business, the things that were reported on the tax
21 returns, we would need to go to the financial statements,
22 not the \$7 you were guessing about; correct?

23 A. We would have to first slice out of those, those
24 financials. Because I am not -- my part of my \$7 did not
25 include distributions to Mark and Mike and me. It didn't

1 include that.

2 Q. Well --

3 A. I wouldn't include that within the \$7. Within the
4 \$7, we did not have marketing included in that, the
5 telemarketing thing. So that wouldn't be correct.

6 Q. Okay. But if we look at the financial statements,
7 we have all the expenses, all the telemarketing expenses,
8 everything's reported there so it's the accurate
9 information, not the guess that you are making, you have
10 said about the \$7; correct? Isn't that right?

11 A. No, sir.

12 Q. Okay. You talked about operations being operated
13 out of Washington Park. Were any DME operations also
14 operated out of Washington Park?

15 A. DME meaning what? DME products?

16 Q. Medicate DME.

17 A. Oh, at the very beginning, I think the first two
18 years, they were in a portion of that building that we
19 were at. When we were very small, they were using the
20 building with us.

21 Q. Okay. And used the equipment? Computers and so
22 on?

23 A. Yes. Yes. The internet, they used that and
24 stuff.

25 Q. Were they paying the \$7? Medicate Pharmacy DME?

1 A. I don't know how they were going to pay Mike back
2 for being in there. I have no idea.

3 Q. Okay.

4 MR. COX: I don't think I have any further
5 questions, Judge.

6 THE COURT: I just have a few more questions, Mr.
7 Siddle.

8 RE-EXAMINATION

9 BY THE COURT:

10 Q. I understand when this arrangement first started
11 between you and Mr. Swift and Mr. Schaltenbrand that the
12 percentage of the partnership was 50, 40, 10; is that
13 correct?

14 A. Yes, sir.

15 Q. And you said, said it changed in January 2008?

16 A. Yes, sir.

17 Q. Okay. Tell me about the change. What was
18 changed?

19 A. It was changed because we weren't sure of the
20 numbers, the invoices I was doing, was correct, so we had
21 to change it. Mark came with an idea saying that, we're
22 not sure if those adjudicated numbers really came back
23 into the pharmacy. We're not sure if they really did come
24 back, so we had to --

25 Q. I'm not asking you to tell me how to make a watch,

1 I'm asking what the time is. Just tell me what changed.

2 A. What changed was, we had to reflect real numbers
3 so we used the P and Ls within the pharmacy.

4 Q. Did the percentage of the arrangement change?

5 A. Yes.

6 Q. Okay. What was that percentage change?

7 A. It changed from I think 35 for Mark, 53 for Mike,
8 and mine was right around 12. I'm hoping that adds up to
9 100.

10 Q. Did, as I understand it, that when that changed
11 that everything was, was folded into the Medicate
12 Pharmacy, it included the retail as well as the, the --
13 was it still in your mind a partnership or were you part
14 of a corporation or what?

15 A. No. In my mind what happened was, we were trying
16 to figure out what truly was the profit for the mail
17 order, and we knew our numbers weren't working. So that
18 way we knew the numbers were coming in, we knew those
19 numbers were correct because there was cash just coming
20 in. But we never took partnerships in the company.

21 That question came up one time in a meeting and
22 Mark asked Mike, could we trade our percents of profit
23 into shares one day? And Mike said, I don't know. I
24 haven't figured out what the company's worth or anything.
25 We are just doing these calculations to figure if we're

1 making a profit and what, how much money needs to go back
2 to the bank for the loan. That's all --

3 Q. So in your mind it was still a partnership?

4 A. Partnership within us three, but not into a
5 company where I shared shares of a company.

6 Q. Okay. All right.

7 THE COURT: Anybody have any questions based just
8 on my examination?

9 MR. COX: No, Your Honor.

10 MS. SCHRICK: I have one quick followup.

11 THE COURT: Yes, go ahead.

12 FURTHER RECROSS-EXAMINATION

13 BY MS. SCHRICK:

14 Q. Mr. Siddle, just to follow up on the judge's
15 question. When that 2008 agreement was made and the
16 percentages changed, what entity's numbers were those
17 percentages calculated off of?

18 A. Totally off of Mark's numbers -- I'm sorry. Ask
19 the question again.

20 Q. What entity were those percentages taken from?
21 What numbers were you using when you applied those
22 percentages, what entity's numbers?

23 A. What they did, what I was told, was they took the
24 retail, how much that was worth in the business, and how
25 much the mail order was, and it was like an 80/20. So

1 they smooth the numbers down where, instead of I'm being
2 here, it would be down here, to try and get it the same so
3 that we're dealing with the same number.

4 Q. Okay. But why did you have to adjust the numbers?

5 A. Well, because it was a retail business in there.
6 There was other pieces of business that Mike owned.

7 Q. Where were those, the retail business was part of
8 what?

9 A. Medicate Central Pharmacy.

10 Q. Okay. And so the new percentages were going to be
11 applied to the numbers of what entity?

12 A. Medicate Central Pharmacy.

13 Q. Was it going to be applied --

14 THE REPORTER: Wait a minute. You're going to
15 have to slow down.

16 MS. SCHRI CK: Okay, I'm sorry.

17 THE REPORTER: Would you repeat your answer? "So
18 the new percentages were going to be applied to the
19 numbers of what entity?"

20 THE WITNESS: Medicate Central Pharmacy.

21 Q. (BY MS. SCHRI CK) Were those new numbers going to
22 be applied to the earnings of the East St. Louis Pharmacy?

23 A. No. Never was.

24 Q. Were those percentages of Medicate Pharmacy Inc.?

25 A. No, it wouldn't be because that's, that's, that's,

1 we're just dealing with Medicate Central Pharmacy, just
2 that location.

3 MS. SCHRI CK: No further questions, Your Honor.

4 THE COURT: You may step down.

5 We'll take a 10-minute recess. Who's your next
6 witness?

7 MR. COX: Mark Swift.

8 (Court recessed from 9:48 a.m. to 10:01 a.m.)

9 (Witness sworn by clerk.)

10 THE WITNESS: Mark, middle initial A, Swift,
11 S-W-I-F-T.

12 THE COURT: Can you give me some idea Mr. Cox of
13 the exhibits you are going to be using with Mr. Swift,
14 unless of course you may say all of them, I don't know.

15 MR. COX: Well, I think we'll be using a good deal
16 of the ones --

17 THE COURT: And you do realize your boss is in the
18 back of the room.

19 MR. COX: I did. And I'm a little nervous
20 actually about that, so I will be critiqued when I get
21 home, I'm sure, but --

22 THE COURT: Do you know what exhibits you are
23 going to be --

24 MR. COX: I'm not sure what they will all be. But
25 I can tell you most of them for a good part of it will be

1 Exhibit 6, which are the e-mails we'll go through, and a
2 couple of others I think the Court already has. So I
3 think a lot of what we're going to start with is
4 explaining how the business began, how Mark came up with
5 the idea and developed this and got the contract with the
6 State and brought it to the pharmacy, so I don't think
7 he'll be strong on a lot of exhibits as we explain that.

8 And then we'll move into Exhibit 6 will be the
9 main source of exhibits, I think, today.

10 THE COURT: Okay.

11 MARK A. SWIFT,
12 having been first duly sworn, was examined and testifies
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. COX:

16 Q. Mark, let me begin by asking you, did you receive
17 anything in the mail from Mike Schaltenbrand in September
18 of 2009?

19 A. Yes.

20 Q. And about when was that?

21 A. 8th or 9th of September.

22 Q. And what was it?

23 A. The UPS box with a piece of paper crumpled up
24 inside.

25 Q. And what kind of box? What size?

1 A. Maybe about 20 inches by 14 inches, maybe two or
2 three inches thick.

3 Q. And when you opened up that box what did you find
4 inside it?

5 A. That crumpled up piece of paper which was printed
6 like on a 45-degree angle which said, effective September
7 1st, you are terminated Medicate.

8 Q. And was it signed?

9 A. No.

10 Q. Let me show you Exhibit 70.

11 THE COURT: That's a new exhibit?

12 MR. COX: I think I showed this to Mr.

13 Schaltenbrand, to Mike Schaltenbrand.

14 MR. SCOTT: I think it's been admitted, Your
15 Honor.

16 MR. COX: I'll put it right here, Judge.

17 THE COURT: Yeah, put as many documents as you can
18 on the Elmo so --

19 MR. COX: I will.

20 THE WITNESS: Can I use the screen to look at
21 things, too?

22 THE COURT: Yeah, sure.

23 Q. (BY MR. COX) Mark, did you ever receive Exhibit
24 70?

25 A. Not until discovery.

1 Q. Discovery in this lawsuit?

2 A. Yes.

3 Q. So this is not the document you got in the box
4 crumpled up?

5 A. No. This is not the document I got in the box
6 crumpled up.

7 Q. All right. Mark, I'd like to go back to the
8 beginning and explain how this whole thing got started.
9 And just a few questions just to, about your background,
10 if we can. Where are you from?

11 A. Originally born, you mean?

12 Q. Yeah.

13 A. West Ellis, Wisconsin.

14 Q. And did you grow up there?

15 A. I spent my school years there and then -- during
16 the school year, and then the summer I worked on a farm.

17 Q. Did you go to college?

18 A. Yes, I did.

19 Q. What year did you graduate from undergraduate?

20 A. I technically graduated twice because I have a
21 double major. The first time I graduated was 1990 -- I'm
22 sorry, 1982, in May. And then I graduated again in that
23 same year in December.

24 Q. And what were your degrees?

25 A. First degree was in accounting, second degree was

1 in finance.

2 Q. And when you were in college did you work?

3 A. Yes. First couple years, I worked in a print
4 shop; I printed envelopes. And painted buildings in the
5 summer. And my last three years of college I worked in
6 the foundry, I shovelled steel in a smelter.

7 Q. Did you do any interning with any companies during
8 college?

9 A. My last -- that period of time when I graduated
10 from one degree and was pursuing the other degree, I
11 worked for Blue Cross Blue Shield on a government project
12 for Medicare and Medicaid, a special project.

13 Q. Tell the judge just a little bit about that
14 project.

15 A. This goes back to that time frame when hospitals
16 used to be paid on a cost basis. And they selected three
17 areas of the country to examine cost data and develop a
18 general cost model for turning into a prospective pay
19 system which ultimately became a DRG system, which all
20 hospitals are paid in the country on now.

21 Q. Now after you graduated from college what did you
22 do?

23 A. From undergrad? I continued on Blue Cross for
24 about another year and, during the process of
25 transitioning that, and then I was recruited to work for

1 Deloitte Haskins and Sells, which is now referred to as,
2 was referred to Deloitte Touche, and now it's called
3 Deloitte Consulting firm. It's a worldwide consulting
4 firm.

5 Q. And Deloitte is D-E-L-O-I-T-T-E?

6 A. Correct.

7 Q. And the second name is Haskins, H-A-S-K-I-N-S?

8 A. Right.

9 Q. Okay. Then did you attend graduate school after
10 that?

11 A. I worked for a number of years before I went to
12 graduate school.

13 Q. Where did you go to graduate school?

14 A. University of Chicago.

15 Q. And did you graduate from there?

16 A. I received an MBA from the University of Chicago
17 with an emphasis in economics.

18 Q. And what year was that?

19 A. That was in December of 1990.

20 Q. Did you work while you were in graduate school?

21 A. I worked for the first year for Baxter Travenol,
22 which is called Baxter International now. And then I was
23 recruited away by one of our clients to do some special
24 projects for him while I finished up for my last year.

25 Q. What kind of work was that? What area, what

1 field?

2 A. All in healthcare.

3 Q. Healthcare?

4 A. Yes. With the, with a special projects was in
5 healthcare and alternative site work, meaning respiratory
6 clinics, nursing facilities, nursing agencies. I worked
7 for the Bill Yarmuth family.

8 THE REPORTER: I'm sorry, you worked for?

9 THE WITNESS: The Bill Yarmuth family,
10 Y-A-R-M-U-T-H. He's now the U.S. Senator there. And they
11 owned all the -- or they owned two-thirds of the
12 licensures for nursing in the State of Kentucky.

13 Q. (BY MR. COX) Are you married?

14 A. Yes, I am.

15 Q. And when were you married?

16 A. Gotta get this right. March 2nd, 1991.

17 Q. So, pretty soon after you graduated from your
18 graduate work?

19 A. Yes, about three months afterwards.

20 Q. And what's your wife's name?

21 A. Ann, middle initial C, Sickon, S-I-C-K-O-N.

22 Q. And what does she do for a living now?

23 A. Well, she helps take care of our son for one
24 thing, but she also is a not-for-profit lawyer board
25 member for a couple of agencies and -- that's on a

1 volunteer basis. And then she works now, they have asked
2 her to work on the HAMP program, if you're familiar with
3 the HAMP program of the United States.

4 Q. I'm not.

5 A. Stands for Homeowners Aid Mortgage Plan, for when
6 people are upside-down on their mortgages, she serves as a
7 mediator between the bank and the people and tries to
8 resolve things.

9 Q. Okay. Do you have any other children besides your
10 son?

11 A. I have two daughters.

12 Q. Okay. After you graduated from graduate school,
13 in addition to getting married, what did you do?

14 A. I immediately set up my own business, Bill Yarmuth
15 from the Yarmuth family continued to give me some work,
16 and I started doing some consulting work. And I set up a
17 number of businesses which I had been trained by both
18 Baxter International on how to do, and also by training
19 through working with the Bill Yarmuth group.

20 Q. What kind of businesses?

21 A. All of them were alternate site businesses. By
22 alternate site I mean anything outside the hospital like
23 pain clinics, pain management clinics, MRI clinics,
24 physical therapy clinics, high tech IV pharmacies, set up
25 a couple of mail order pharmacies for a combination

1 between Yarmuth Group and PruCare. A variety of
2 businesses I was hired to set up outside the hospital
3 environment, all healthcare.

4 Q. Was there a business you set up called Health
5 Alliance?

6 A. Yes, that was several years later I set up Health
7 Alliance.

8 Q. And tell me about, tell us about that, what was
9 it.

10 A. we were approached the first time by some, that
11 was when the, that was David Citron was at the State of
12 Illinois and he had a situation where he brought to me the
13 idea of how I've got some high risk patients that I need
14 some special taken care of, how would you approach it? So
15 we set up a mail order pharmacy for that and served those
16 patients. And then acquired several other contracts with
17 states for similar type business.

18 Q. And about when did that start?

19 A. 1997.

20 Q. And where did it operate? What area?

21 A. Area meaning geographical area?

22 Q. Yes, sir, mm-hmm.

23 A. We had a facility in Buffalo Grove, Illinois. We
24 had a facility in Baton Rouge, Louisiana; had a facility
25 in Jackson Mississippi; had a facility in Fort Lauderdale,

1 Florida; and we had an alternate facility in the Miami
2 area.

3 Q. And when you say high risk patients, what kind of
4 folks are you talking about?

5 A. The State classifies them, and they have different
6 names for them. But they're a high risk individual
7 basically, is somebody who is on a multiple of drugs,
8 usually has a economic and a social factor that make them
9 high risk. By social factor I mean they don't have
10 relatives or people that can help them get their drugs to
11 them, they can't get out and about, they may live alone by
12 themselves. Economically, I think that's self
13 explanatory, when people have low income, they don't want
14 the people spending their disability checks and State
15 funded checks on hiring cab services to get to pharmacies
16 and get to doctor visits, so they're classified as high
17 risk.

18 Q. Okay. And so tell us about when you got out of
19 that business.

20 A. In 2003, an investment group came in because we,
21 we had a mixed blessing, a fortune, we got a very large
22 contract but it required -- with the State of Louisiana,
23 which was the largest contract of its time for medical
24 services for high risk patients and it required that we
25 brought in a very large partner with some dollars. So we

1 were able to convert our cash -- or, I'm sorry, our stock
2 from one company to the other company, the new company,
3 and they funded it with another \$35 million of capital.

4 Q. And why did you decide to get out of it?

5 A. Because we could not service that contract. I --
6 it was -- I was -- we were so small and we had this big
7 contract. It overwhelmed us. We just could not do it.
8 We were -- we had to get help, you know.

9 Q. Okay.

10 A. If -- and we couldn't turn our back on the State
11 since we pursued the contract.

12 Q. Okay. So in Health Alliance, did Health Alliance
13 itself own pharmacies?

14 A. Yes, in all those locations I mentioned.

15 Q. Okay. So the, the Health Alliance Corporation
16 itself owned the pharmacies and did the mail order through
17 those pharmacies?

18 A. Exclusive mail order through each of those
19 pharmacies. One of them had a retail component. That was
20 the one in Buffalo Grove.

21 Q. Okay. So when you got out of that business what
22 did you do after you sold that interest? Gone back home
23 to, where's home?

24 A. Home is Kenilworth, Illinois, which is nine miles
25 from like Northwestern University on the Lake by Evanston

1 area.

2 Q. Okay. And so what did you do after you got out of
3 Health Alliance?

4 A. Well, my wife was getting into, she wanted to get
5 into the businesses, she had been a nurse and she had been
6 -- she has a variety of degrees, she's a nurse and she
7 also has her master's in public health, I guess it is, and
8 she's got her law degree. So she wanted to get into a
9 program of servicing similar type situation, a little bit
10 different, in the State of Florida. We had a first
11 opportunity. So she set up DeliverMed company, DeliverMed
12 Holdings. And I helped her.

13 MR. STINE: Your Honor? Never --

14 THE COURT: What's your --

15 MR. STINE: I was going to object, the question
16 was what did he do, he told us what his wife did, but then
17 he said he helped her, so.

18 THE COURT: Okay.

19 Q. (BY MR. COX) Did you and your wife have any
20 discussions about getting a contract with the State of
21 Illinois?

22 A. Yes.

23 Q. And what was that contract you were seeking?

24 A. I was contacted by some folks at the State of
25 Illinois, and this would have been 2004. And we were

1 actually in Florida doing work when we were contacted.
2 And that the State of Illinois was looking at expanding a
3 program for what they refer to as the high utilizer drug
4 users.

5 And the idea was, I don't mean to get, explain in
6 too great a detail so just give me a moment, but the
7 hospitals in the major metropolitan areas have underneath
8 them what they call support hospitals. For example, like
9 in Chicago you have St. Anthony and Mercy, very small
10 hospitals. And what happens is when patients don't get
11 their drugs or don't take their drugs, they go to the
12 emergency room of the major hospitals, or the smaller
13 hospitals and cause huge economic hardship on them for
14 simple things, they didn't get their blood pressure pills
15 for several days, those economic social reasons we
16 discussed. And it was starting to strain the system a
17 lot. So they wanted to look at the high utilizers.

18 Q. So are these similar type patients that you were
19 serving in Health Alliance?

20 A. Yes. The unique difference between them was in
21 Health Alliance you had a contract with the State. In
22 the, what the State was talking about now is, we will help
23 you recruit where you will have individual patients. From
24 a business risk perspective, it's fantastic. Because if
25 the State wakes up the next morning and doesn't want you

1 as a client, you lose a whole bunch of patients. But if
2 you have to require -- you know, thousands of patients
3 have to all wake up and decide that they didn't want you.
4 So it was a contract with individual patients, servicing
5 individual patients.

6 Q. I see. Now, does this involve Medicaid?

7 A. Did it involve Medicaid?

8 Q. Yes.

9 A. Yes.

10 Q. And what is Medicaid and how is that different
11 from Medicare?

12 A. Medicaid is -- Medicare, people are aware of,
13 it's, you know, it's usually age based, you need to be 65
14 or older or you're legally disabled. Medicaid has
15 economic reasons why you are on it, and it also is not
16 only economical but it can be what they call the
17 proportional economic, which means like even though you
18 maybe make a quarter million dollars a year but you have a
19 son who has hemophilia and it cost you 200,000 a year,
20 they're going to help you out. And the Medicaid plan is
21 funded partially by the State, in this case, the State of
22 Illinois receive 30 percent from the State, and 70 percent
23 from the federal. Where Medicare receives 100 percent
24 from the federal.

25 Q. Well, why did you and your wife want to get

1 involved with this contract with the State?

2 A. Well, what we liked about it was when we sat down
3 and talked about the State, it had of course good economic
4 potential. But there was also a factor that we felt
5 equally important is when the State started showing us the
6 demographics, and it's hard to believe but in the State of
7 Illinois in all 102 counties that we have, there are
8 actually counties that lack a pharmacy or have one
9 pharmacy, or only have two physicians, and there are some
10 remote areas like that.

11 Plus, in the Downtown south side of Chicago there
12 was, they were showing us economic areas where people
13 could be literally blocks from a pharmacy but, because of
14 copays and deductibles they may have, they may not be able
15 to afford it at that time and have to pay it later. But
16 if they went to those local pharmacies, they would be
17 turned down for getting their drugs, thus falling back
18 into the whole operation of where they go back into the
19 hospital ER.

20 So they had these two factors of, call it
21 demographically unable to service as well as economically.
22 And it, we liked the idea of that a lot. We're going to
23 be able to help the people, we're going to be able to make
24 some money, and it's going to keep going.

25 Q. Now then, what did you have to do, what did you

1 and your wife have to do in order to bid on this contract?
2 What was that process?

3 A. The process was very long. It took us about 18,
4 20 months to complete. What we did is, we had to build
5 first -- first of all, we had to build a, a computer
6 system or, that could record or could sort through the
7 data for the patients. Then we had to contract with
8 various printers on behalf of the State to where the State
9 could then contract with the printer to have the printing
10 information sent to the people to be notified by mail. We
11 had to then go through focus and test groups to do our
12 telemarketing analysis of what had to be done or said on
13 the phone so that we could achieve the results. We had to
14 go through focus groups on the mailings. We had to go
15 through State meetings approving the mailings. We had to
16 go to through State meetings to approve the phone call.
17 We had to interview a variety of call centers for it. We
18 had to develop database sources to sort out once the
19 information would come from a call center or a mail house,
20 to come back to us with the information where we could to
21 turn it into a usable spreadsheet. The list goes on.
22 There's a lot, lot of work involved.

23 Q. Let's break that down just a little bit. What
24 kind of program did you have to develop in terms of the
25 computer and, and other aspects of the program to make

1 this work?

2 A. Well, we developed what's called a logarithmic
3 function program, which we took every county in the State
4 of Illinois, all 102 counties. We broke it down then by
5 economic information because we were, with the Medicare,
6 one of the major factors is economics of person. And then
7 we would have to break down that data to the ZIP code area
8 of the county. Then we have to break that ZIP code data
9 down to further data so that we could target the market
10 and reach the patients we want.

11 There are, what, 13.8 million people in the State
12 of Illinois. We wanted to bring that down to the people
13 that can service these areas.

14 Q. So you were trying to identify specific people?

15 A. Correct.

16 Q. In order to develop that program did you have to
17 hire people to help you?

18 A. We hired a lot of subcontractors, contractors we'd
19 call, people that wrote programs for us, people that, we
20 hired various data houses to obtain information for us.
21 U.S. Med, which is a mail house for med, Al esco, a variety
22 of mail houses that could sell us information on data
23 economics and -- it's called demographics in those
24 particular areas.

25 Q. And what did it cost to develop this program?

1 A. Developed all that over 20 months, we invested in
2 excess of 300,000.

3 Q. And where did that money come from?

4 A. My wife took it out of her ERA.

5 Q. Did Michael Schaltenbrand or Joey Siddle or
6 Medicate Pharmacy Inc. pay for any of the costs to develop
7 that program you have just described?

8 A. No.

9 Q. This software program, what was your involvement,
10 I understand you had people that were actually programming
11 stuff, but who developed the model for that?

12 A. I developed the model.

13 Q. What is a model?

14 A. It's like defining air. A model is a, is
15 basically a concept of, of how we can in this case
16 numerically use information to arrive at the results we
17 want. And then when you change the information, the
18 results will change. And with a model, you do what they
19 refer to as stress testing, where you put excess amounts
20 or minimal amounts and see what the range is, the relevant
21 range. So it involves a lot of statistical data and
22 economic data that we -- I had gone to school for.

23 Q. Okay. So during this 18 to 20 months it took to
24 create all this program to make the bid with the State,
25 was this before Michael Schaltenbrand was involved, before

1 Joey Siddle was involved, before Medicate Pharmacy was
2 involved?

3 A. Well, we had done some -- my wife had done some
4 work and we had helped her in 2004 with some diabetic
5 patients. It was before we were doing these mail order
6 patients that we are talking about as a result of this
7 case, it was long before that. Before that time frame.

8 Q. It would have been before that time?

9 A. Yeah.

10 Q. Okay. And who ultimately made the actual bid on
11 the contract?

12 A. My wife did under the minority, women minority
13 contract bid.

14 Q. And what corporation or business actually bid on
15 the contract?

16 A. It was DeliverMed Holdings.

17 Q. And what is DeliverMed Holdings and who owned it
18 at the time of the bid?

19 A. 2004-2005, at the time of the bid, my wife owned
20 100 percent. It is a corporation. It is a Illinois
21 corporation.

22 Q. Okay. And that --

23 A. I'm sorry.

24 Q. And that later changed in terms of ownership at
25 some later time?

1 A. Let me change that. It's an LLC, Illinois LLC. I
2 apologize. To answer your question, did it change? It
3 changed a couple of times over that time frame.

4 Q. Okay. But at the time this business started, she
5 was the owner?

6 A. Yes.

7 Q. Okay. Now then, so the program gets started.
8 You get the contract. What did you have to do with
9 respect to the State in terms of your interaction with the
10 State to get them to choose you as the, as the party or
11 you and your wife to have this?

12 A. Well, you go through the process of making a
13 formal bid. You go through the process, that way you
14 answer a variety of their questions which in this case
15 dealt with, dealt with all the things associated with the
16 call centers, call scripts, information as how you are
17 going to move the information, HIPAA requirements, how
18 you're going to protect the information, and all those
19 things have to be addressed and we had to make a formal
20 presentation to the State.

21 Q. You mentioned a couple of things I wanted to ask
22 you about. You talked about scripts. How would the
23 actual contact with the patients occur?

24 A. Initially when the State was doing their work,
25 what we, we developed was a, a mailing that would go to

1 the patients. And the mailing would go out of a
2 contracted mail house by the State. Then the people would
3 receive it and then do a call into the, a call center to
4 get the information. So we had to develop the call
5 scripts and the data collection information format to
6 collect that data.

7 Q. What is a call script exactly?

8 A. It's very similar to just a, a computer that comes
9 up here. And when the person calls in with their phone
10 number, it tells by public information who lives at that
11 address. And then they'll say, you know, are you calling
12 us, Mrs. Smith, about -- and then talk to them. Present
13 what your concept that you are trying to have the patient
14 register for. Get approval for the patients. All this is
15 being recorded. Then you go through and get, collect, I
16 mean, some of the scripts, they have about 160 to 200
17 pieces of information you had to collect.

18 So a patient that would call in and would come on,
19 that was maybe 6, 7 scripts, could take as much as 40, 45
20 minutes to get all their information.

21 Q. So you wanted to have it be uniform so everybody
22 was on, I guess as you say, working off the same script?

23 A. Well, it's more than we wanted to be uniformed
24 it's, a requirement to the State contract.

25 Q. Okay.

1 A. That you follow the script, that you follow
2 through the methodology, that you submit to them.

3 Q. All right. So, how were Illinois Medicaid
4 patients notified about this program?

5 A. Initially, they were notified by the mailing that
6 went out from the mail house who the State contracted
7 with. Then it had a phone number, if the patient wanted
8 to contact, and they would call the call center and either
9 receive information as to here's what the program's about
10 and make a decision, or they could fill a card out and
11 mail it back, which in case we would call them. With a
12 different call script because that was an outbound call
13 script.

14 Q. Okay. At some point -- well, let me ask this
15 before I move ahead.

16 A. Sure.

17 Q. What kind of hours are we talking about that you
18 and your wife invested in this program in addition to your
19 money over this 18 to 20 months?

20 A. Well, the -- the, the model building was crazy
21 hours. I mean that's, you know, 12, 15 hours a day
22 because you're dealing with people or you're sending them
23 your model and you're sending it back and having -- they're
24 revamping. Call scripts, you know, you do focus groups
25 late at night when people are off work. So I mean, you

1 know, it well exceeded 50, 60 hours a week.

2 Q. Now, after this program was developed which you
3 just told us about did you expand this program beyond just
4 the Medicaid patients?

5 A. Yes. What happened is, in 2004 the United States
6 Government was changing the Medicare for the dual
7 eligibles. Dual eligibles meaning a person was both on
8 Medicare and Medicaid, to where those folks would be
9 covered under the Part B as in -- D -- as in dog -- drug
10 program that everybody is aware of now. And then the, in
11 the past Medicare was always primary but Medicare did not
12 cover prescription drugs so it was all covered by the
13 State Medicaid program.

14 With this program changing like this to Part D --
15 as in dog -- what we did with the State, what the federal
16 government in essence did is now Medicare is going to pay
17 for those drugs and Medicaid in many instances will pay
18 for the copays, deductibles for noncovered patients.

19 So I attended a bunch of seminars in, that the
20 United States Government was giving, one was three or four
21 days in New Orleans, that went through how the program
22 would work. And one of the pieces of public information
23 they released by a stroke of luck was they broke down
24 every state ZIP code and sub ZIP code of the total number
25 of people and relying in the sub ZIP code numbers were

1 these people who were dual eligibles.

2 So having developed this model, I now had a very
3 golden key piece here that I could take, put into my
4 model, and now tighten it down to where I could identify
5 with almost an 80 percent accuracy that if I market it by
6 telemarketing or by phone to that area, I would have a
7 higher ability to get patients.

8 Q. Did you have to develop a software program for
9 this expanded part of the program?

10 A. Yeah, well, we developed software that ran off of
11 the Microsoft system, yes.

12 Q. And did -- was there a cost for that --

13 A. Yes.

14 Q. -- in developing this part of the program? What
15 was that?

16 A. Oh, specifically that cost invoice I don't
17 remember, but it was included in that in excess of
18 300-something thousand dollars.

19 Q. Okay. Now did Michael Schaltenbrand or Joey
20 Siddle contribute anything to development of this expanded
21 program?

22 A. No. Not to this expanded model and program, no.
23 But we also did that model program for -- I did it for the
24 State of Florida, too.

25 Q. Okay. Let's turn now to the call centers

1 themselves and find out something about how they actually
2 worked. How would you go about reaching people from, that
3 you wanted in your program, how did you go about conveying
4 information to them about what you were doing?

5 A. Well, as a result of this new information I got
6 with the new Part D program, I was able to change the
7 model, as I said, expand or change the model to where I
8 would then reach out to data houses and buy lists of
9 patients -- I'm sorry, lists of people I would buy, in
10 those ZIP codes.

11 And then through all the different logarithmic
12 functions we would literally add those patients -- or
13 people to the program and it would filter out who would
14 fall in our demographics area. And then we could tighten
15 up the model perspective and be able to contact those
16 patients.

17 Q. What exactly is a call center?

18 A. Well, that's changed over the years. Years ago, a
19 call center was, you know, we were all watching, late at
20 home watching TV and they'd be calling up and they would
21 try to sell you aluminum siding or things of that nature.
22 What developed was the, it's called the DNC, the Do Not
23 Call list was started by the FCC, which controlled that.
24 And it put a lot of call centers out of business. So the
25 call centers that are left are primarily intake call

1 centers.

2 But then we would train, my wife and I would hold
3 groups, I would also have, hire people who were in the
4 area who had knowledge of telemarketing, and we took some
5 of those people, contracted with them and trained them how
6 to be outbound call center people. So we would take our
7 list, run it through the DNC, these people can be called,
8 then we had these trained people to make outbounds while
9 the inbounds would come through mailing.

10 Q. I see. And how you did you go about selecting
11 these call centers?

12 A. Well, most of them we would, the first thing we
13 would do is get on the internet and find every call center
14 we could in the United States.

15 Q. When you say "we," who do you mean?

16 A. I was primarily doing that myself. And then my
17 wife did a lot of the interviewing, finding, do you fit
18 this criteria? And if they fit certain criteria, then
19 we'd go the next step and then I would start to negotiate
20 with them to see what they could do. Some of them were so
21 large that I couldn't offer them attractive business, that
22 it was just a waste of time. And some of them were so
23 small that they couldn't give us the services we needed.
24 And we would -- even though we were doing this on our own
25 we would parallel what the State wanted us to do as far as

1 standards. So we would train those people.

2 Q. And, and the ones that were selected, where were
3 these call centers located?

4 A. Well, Chicago; Rockford, Illinois; there was one
5 in Decatur, Georgia; Idaho; Iowa; and there's one I think
6 in Atlanta. There might have been others, I can't think
7 right now.

8 Q. In this program did you ever use any call centers
9 that were not American call centers?

10 A. You mean located in the United States?

11 Q. Correct.

12 A. They're all located in the United States.

13 Q. Uh-huh. And why did you do that?

14 A. Well, very -- many reasons. One, the State
15 required it on their side of the contract. The other
16 reason is, we wanted to have people with, that could
17 properly pronounce people's names, that we wouldn't have
18 any confusion with, you know, the dialects or things of
19 that nature. And frankly, I was very nervous about having
20 information of potential patients or information about our
21 models and patients leaving the country.

22 Q. Now then, the training you talked about that was
23 provided to these call centers, who paid for that?

24 A. We did. My wife and I. It was DeliverMed who
25 paid for it.

1 Q. And did Joey or Michael pay for any of that
2 training of these call centers?

3 A. Not the training part, no.

4 Q. Did you test the program you developed to see
5 whether it would work?

6 A. Well we would always -- when you have a call
7 center, what you do is you, they, they -- when you have
8 selected individuals, you have to go through a process of
9 where they go through a training and they run through mock
10 calls with you. And they'll call you and say, the next
11 four people are going to call you, are going to use --
12 address you as this name, and then you would try to
13 challenge them on the phone to go off script or challenge
14 them to get other information or challenge them to, you
15 know, to not follow the script basically.

16 Q. And did you have to spend money to go through that
17 testing process?

18 A. Yes.

19 Q. Did Joey or Mike pay for any of that testing of
20 the program?

21 A. No. Not the testing part, no.

22 Q. That was you and your wife and DeliverMed?

23 A. And -- yes.

24 Q. Now then, in addition to call centers did you use
25 direct mailing?

1 A. Yes, we used direct mailing.

2 Q. What is direct mailing?

3 A. Well, what we -- we handle direct mailing
4 ourselves. In other words, we would write a letter or we
5 would write a brochure and then we would do a merge
6 between our data sources that we have run through our
7 group into this letter and personalize it, print off a
8 label on another computer, and mail it out to the
9 individuals.

10 Q. And who developed these marketing materials for
11 the mailing?

12 A. Well, I wrote most of it. And then -- but when
13 you deal with focus groups you find out nobody likes what
14 you write. So we had to revamp and revamp them and so at
15 the end it was a product of many people's input,
16 collaborations.

17 Q. What's a focus group?

18 A. Well, we tried to get people in our demographic
19 groups or people in our age groups that we were targeting
20 and had them look at the piece of paper. And I mean,
21 there are people who professionally look at color of
22 paper, fonts, what attracts people. We all know it, we
23 all get junk mail and occasionally a piece catches your
24 eye and you open it. And what does it take? What does it
25 take to get that person to want to open that piece of

1 mail.

2 Q. Now that you have this program developed, you have
3 the contract with the State, you set up the call centers,
4 you have done the direct mailing creation and all of that,
5 all of that cost up to this point has been on your side is
6 that correct?

7 A. It's been DeliverMed side, yes.

8 Q. Right. Not Mike or Joey.

9 A. No. Not at this point, no.

10 Q. Now then, after you developed this program, these
11 programs, what was the next step you had to take to make
12 this all happen?

13 A. I just have to -- because to answer the question
14 is a little different. I hadn't made any mailings yet. I
15 hadn't done any calls yet.

16 Q. Sure.

17 A. Now I had to get a pharmacy.

18 Q. You needed a pharmacy?

19 A. We needed a pharmacy to service the patients.

20 Q. And was that because you don't have a pharmacy?

21 A. That's correct.

22 Q. Okay. And so what was the role of DeliverMed
23 Holdings going to be if the pharmacy was going to become
24 involved?

25 A. They were going to use their model and use their

1 marketing abilities to market the patients.

2 Q. And then they would do what with those patients in
3 terms of the pharmacy?

4 A. Referring, referring them then to be serviced by
5 the pharmacy that we contract with.

6 Q. Okay. Could you have chosen any pharmacy in the
7 State of Illinois to do this partnering with you?

8 A. I -- we could have chose any pharmacy out of 38
9 states in the United States, because 38 states are allowed
10 to ship drugs into the State of Illinois. So we could
11 have picked 38 states and chose any.

12 Q. So who did you and your wife choose to be the
13 pharmacy that was going to partner with you to carry out
14 this program you had created and carry out the contract
15 you had with the State?

16 A. Ultimately Medicate Pharmacy, Incorporated.

17 Q. Now, to your knowledge had Medicate Pharmacy ever
18 been in the mail order business before you invited them to
19 be part of this mail order business?

20 A. They told me they were, they just virtually did no
21 mail order.

22 Q. Okay. So this was something new, I guess?

23 A. Yes.

24 Q. Please tell the judge how it came to be that you
25 selected Medicate Pharmacy to be the pharmacy that you

1 wanted to partner with.

2 A. I knew Joe Siddle from Health Alliance. He sold a
3 product then to, to Health Alliance. He was one of our --
4 we were one of his vendors -- or he was one of our
5 vendors. We were one of his customers. So I knew that.

6 And I contacted Joe Siddle and I said, I need to
7 find some pharmacies that want to do Medicaid. I know you
8 operate in the State of Illinois a lot. And Joe mentioned
9 that he was now not with HDI but he was working for this
10 Medicate Pharmacy full time doing work.

11 Q. Did he tell you who the pharmacy was owned by?

12 A. He told me it was owned by Mike, and he said, his
13 last name is Schalt-something, he said, I can't remember
14 his last name, I don't know how to pronounce it, but I'll
15 introduce you to him.

16 Q. Okay. And did he tell you what Medicate Pharmacy
17 did?

18 A. Well, he told me to meet them at -- the first
19 meeting we came down to, he had me drive down to the
20 Washington Park pharmacy. And I met him at the Washington
21 Park pharmacy and he introduced me to Mike Schaltenbrand
22 for the first time.

23 Q. Had you ever heard of Mike Schaltenbrand before
24 that day?

25 A. No.

1 THE COURT: Can you put a time frame on that?

2 MR. COX: Yeah.

3 Q. (BY MR. COX) When was that, Mark?

4 A. That was spring of 2005.

5 Q. '05? '05?

6 A. I'm sorry, spring of 2004. Finally met Mike in
7 maybe early summer of 2004?

8 Q. What was that, what did that meeting consist of?
9 Where was it and what, what, who was present and what was
10 said?

11 A. Well, I met, I stayed at a Holiday Inn, I think it
12 was, out near Alton. And Joe and I met for dinner and he
13 told me he was going to introduce me the next morning to
14 Mike. And I showed him our spreadsheet of our forecasts.
15 He asked if I could give him a copy of that. I gave him a
16 copy.

17 We went to dinner and the next morning I went to
18 the pharmacy and we waited a few hours and Mike showed up.

19 Q. And tell me about that meeting. What took
20 place?

21 A. Well, I described what we were doing. And Mike
22 would, had to go, he was only there for a couple minutes.
23 I described what we were doing and he -- we kind of left
24 and they said they'd let me know if they were interested.

25 Q. Now at that meeting was there any discussion at

1 all about the structure of the business?

2 A. No, we weren't even to that point yet.

3 Q. Okay. So then that's the spring or early summer
4 of 2004. Take us to the fall of 2004. What happened
5 then?

6 A. Fall -- well, Joe Siddle called me up and said
7 that they were not interested in doing this, that they
8 were successful at what they were doing, and they wanted
9 to move forward on their own and good luck to me.

10 Q. So had you heard anything from them since back in
11 the spring through the fall when he called?

12 A. No.

13 Q. Did he say why they weren't interested.

14 A. He just said they were having good luck at what
15 they were doing and they just didn't want to look at
16 anything else.

17 Q. And when did you next hear from them, either Mike
18 or Joey?

19 A. Well I heard, we knew -- we were still -- keep
20 working on this contract working with the State and so we
21 didn't have a decision if we were going to finally get it
22 yet and I was -- I specifically remember this. I was
23 driving at a very dark night with my family in the car, we
24 were driving that long drive, if anybody's done it, to get
25 to the Grand Canyon, it's like 12, 15 mile ride of just

1 pure darkness. And the phone rang and I didn't even know
2 I had cell coverage. And Joe said, are we, are we going
3 to do this thing or not? And I said, well are you still
4 interested? He said -- you weren't before. And he said,
5 I've got to do it, we've got to do it because they're
6 cutting the respiratory reimbursement, and if I don't do
7 something I'm going to have to get a job as a salesperson
8 again.

9 I said, well, if you're interested, we haven't
10 selected anybody, we still don't have the final contract
11 to move forward.

12 Q. And when was that call?

13 A. I know it was spring break in March of 2005.

14 Q. So you hadn't heard anything since, since earlier
15 and --

16 A. No.

17 Q. -- now comes the call in 2005. Did you have a
18 meeting with them after that call from Joey?

19 A. Yes. Maybe like April, like a few weeks later, I
20 met with Joe and Mike at the Holiday Inn in Springfield,
21 Illinois.

22 Q. And was your wife present?

23 A. She was on the speaker phone for a while but not,
24 she wasn't physically there.

25 Q. And tell us about that meeting. What happened.

1 Who all was present, you and Mike, Joey --

2 A. And my wife on the speaker phone for part of it.

3 Q. All right. Tell us about that meeting.

4 A. We -- I rented a little conference room that they
5 have there. And, you know, we discussed what, they --
6 they told me what they could do, what services they could
7 provide, and Mike showed me some financial statements from
8 2003 and 2004, what he was making and the profitability,
9 and how they could turn their retail aspect into a retail
10 and a full blown mail order.

11 Q. What were you seeing in the financial information
12 that he was showing you at that time?

13 A. 2003, he had an amazing bottom line that he showed
14 me which was like 22, 23 percent profitability, just huge
15 profitability in numbers. It was very profitable little
16 businesses he had.

17 Q. And how was it in terms of sales?

18 A. He showed me the one for East St. Louis and, which
19 he called St. Mary's at the time, and he showed me another
20 one, I think he called it Central. And then he showed me
21 -- but there was no combined one that he showed me. And
22 they were very, very small but they were very profitable
23 for a sole proprietorship. I mean, I think he was -- if,
24 if 800,000, 900,000-dollar sales at that point.

25 Q. And what kind of net profit were they looking at

1 just when they were retail at that time?

2 A. He was doing very well, like I said, about 20 to
3 23 percent bottom line. He was doing very, very well.

4 Q. Okay. Did they seem anxious to, Mike and Joey, to
5 partner with you in this mail order business?

6 A. Joey was very, very anxious. And Mike was, you
7 know, conducting like a businessman and, you know,
8 negotiating different options, different things, proposing
9 different ideas.

10 Q. Now, were there any discussions at this point
11 about whether there would be a partnership?

12 A. Yes, there was a discussion about having a
13 partnership to divide the profits for the mail order
14 business and do the operations. And Mike said, I have the
15 pharmacy, Joe can do the operations, you can do the
16 marketing and help with some other things down there, and
17 we'll divide the profits up.

18 Q. Now who were going to be the partners at this
19 point when it started?

20 A. Initially we discussed 50 percent for Ann and 50
21 percent for Mike.

22 Q. Okay. So you weren't going to be a partner at
23 this point?

24 A. No.

25 MR. STINE: Your Honor, I want to object. He

1 already said he was going to be a partner. He was going
2 to do the marketing, he said.

3 THE COURT: Well, I heard what he said. You can
4 cross-examine him on it.

5 MR. STINE: Okay.

6 Q. (BY MR. COX) And was Joey supposed to be a
7 partner at this point?

8 A. Was he supposed to be a partner?

9 Q. Right. Was he -- you said 50 for Ann and 50 for
10 Mike. How did Joey get involved?

11 A. At the meeting it was offered, Mike offered up the
12 idea of why don't you guys give 10 percent, I'll give 10
13 percent, Joe will have 20, I'll have 40, your wife and
14 family whatever will have the other 40 percent, and so it
15 will be a 40, 40, 20.

16 Q. So did Ann give 10 percent of her 50 to, to Joey?

17 A. Yes.

18 Q. Did Mike?

19 A. No.

20 Q. So that's how it ended up being 50, 40, 10?

21 A. Correct.

22 Q. Now then, at that time was there a discussion
23 about whether Mike would have a salary in this business?

24 A. Well, we said to -- you know, because his
25 profitabilities, I was greatly concerned that what if he

1 decided to take a half a million dollar salary and then
2 the bottom line would be smaller. I said, what about
3 salary? Mike stated, I will not take salary until this
4 business is profitable or until -- and then at that time
5 you guys get a matching salary. And he -- then Joe
6 described that, he said, well, if I'm going to do this I
7 need to have \$2,000 a week.

8 Q. So did you later learn that Mike had in fact been
9 taking a salary from the beginning?

10 A. Yes.

11 Q. And was that known to you until sometime later?

12 A. Not until much time later.

13 Q. And so what did Mike in the meeting call this
14 entity that was being created?

15 A. Mike called it a partnership.

16 Q. Now did Mike have any comments on why Joey would
17 be doing the operations?

18 A. He felt that he didn't -- Mike said he didn't want
19 to, you know, mess with being that business. He had
20 enough going on with his retail businesses. And he had
21 the facility, he was providing the structure, he said, so
22 he didn't want to mess around with the, doing this
23 business.

24 Q. And so whose idea was it to hire Joey to do the
25 operations?

1 A. Joey's. Joey proposed the idea.

2 Q. Okay. Then we've talked here about this
3 partnership. We have Ann and Mike and Joey. We talked
4 about 50, 40, 10. Was there any discussion at all about
5 payment of a 7-dollar overhead back to Medicate Pharmacy
6 Central?

7 A. There was no discussion with me, no, or my -- when
8 my wife was on the phone, there was no discussion with her
9 about any 7-dollar fee.

10 Q. Now then, so let's think about this for a minute.
11 We have this partnership of these three people. They're
12 going to share in the net profits; is that right?

13 A. Correct.

14 Q. What is the role of DeliverMed Holdings
15 corporation in this business, this mail order business?
16 What's its role?

17 A. Well, DeliverMed is really no different than
18 Medicate. It's an entity that is providing services to
19 the partnership. Medicate is an entity providing services
20 to the partnership.

21 Q. When you say Medicate, you're talking about
22 Medicate Pharmacy?

23 A. Medicate.

24 Q. I don't want it to sound like Medicaid.

25 A. That was one of the problems. It sounded like we

1 were saying Medi cal d.

2 Medi cate Pharmacy would provide services to the
3 partnershi p. Del i verMed would provide services to the
4 partnershi p.

5 Q. And those services Del i verMed Hol di ngs was
6 provi di ng to the partnershi p, was i t doi ng that j ust for
7 rei mbursement of i ts expenses or was i t to get a porti on
8 of the profi t?

9 A. No, i t was the rei mbursement. We forecasted each
10 model as to -- we di d a reverse. We devel oped a model
11 that would say, okay, we want to obtai n 500 pati ents thi s
12 month. We were going to back i nto i t.

13 To get 500, we know i f we mailed so many l etters
14 we're going to get so many response. We get so many
15 responses, we can get so many peopl e i nterested. I f we
16 get so many peopl e i nterested, we may get so many si gned
17 up.

18 I f we make so many call s, we're going to -- same
19 scenari o. And when you get to the end and you say, okay,
20 what are al l those costs going to cost for thi s campai gn
21 to get 500? And we di vi ded that up by week or by month
22 and sai d, thi s i s what i t's going to cost to fund i t. So
23 we knew how much i t was going to cost to mai l , we knew how
24 much i t was going to cost to call , and we di d those
25 programs that way.

1 Q. So DeliverMed's getting its expenses, no profit.
2 What about Medicate? What was its role? Medicate
3 Pharmacy.

4 A. Medicate Pharmacy would do basically what we call
5 the back room operations. Which is, once all the
6 information is developed, once we get the physicians'
7 names and everything, the patients register, the patients
8 sign up, Medicate Pharmacy takes over and starts to
9 service the patient, get the information in the back room.

10 Then when they get the information in the back
11 room, when the patient is ready to receive their drugs,
12 Medicate Pharmacy would ship it out. They do that all on
13 cost, like the financial statements show, and then you
14 have a profit of that organization, partnership, and you
15 divide it 40, 50, 10.

16 Q. Okay. So, just to summarize here, we have
17 DeliverMed's up here getting the patients, finding people
18 that want prescriptions, they are feeding that information
19 then to Medicate Pharmacy?

20 A. Feeding information of people that are interested.

21 Q. Right. Of, of who's -- wants prescriptions. So
22 Medicate Pharmacy's filling those prescriptions. And then
23 after those prescriptions are filled and there's a profit
24 left over from that activity, that would be divided by the
25 partnership; is that correct?

1 A. Right. Medicate then established a bank loan that
2 it would go and borrow money for the marketing. Let me
3 use an example, say they borrowed \$15,000 in marketing;
4 they would put that on to their income statement. Then
5 the revenue would come in and it would pay for those
6 expenses, one of the expenses being marketing, and then it
7 would have a bottom line. When it pays those expenses it
8 takes that cash to those people and pays.

9 So, if they borrowed from the bank, and they got
10 the reimbursement through the financial statement for the
11 marketing, paid the bank.

12 Q. Okay. We'll talk a little bit more about that
13 later.

14 THE COURT: I'm a little -- I need some
15 clarification.

16 MR. COX: Sure.

17 THE COURT: All right. We have DeliverMed Holding
18 which is going to do the marketing; correct?

19 MR. COX: Yes. It's going to get the patients
20 through marketing --

21 THE COURT: It's going to get the patients and so
22 they're expending funds to do that; correct?

23 MR. COX: Yes, they have expenses.

24 THE COURT: They have expenses. You have Medicate
25 Pharmacy, which is going to do the operations --

1 MR. COX: Correct.

2 THE COURT: -- which receives the, the patients'
3 information and dispenses the drugs; correct?

4 MR. COX: Correct.

5 THE COURT: They get their expenses paid.

6 MR. COX: Yes. And those are shown on the
7 financial statements as of those expenses.

8 THE COURT: Right. And then after the expenses of
9 Medicate and DeliverMed are paid, there is a -- assuming
10 there is a net profit, that is divided 50, 40, 10?

11 MR. COX: Correct.

12 THE COURT: Okay.

13 MR. COX: That's correct. And I think the
14 important point is that the profit all is shared by the
15 partners, not by -- there's no profit going to the
16 corporations. I think everybody agrees on that.

17 THE COURT: Correct. Okay. So far, I have not
18 seen any expenses of DeliverMed in this trial, though;
19 correct?

20 MR. COX: No, those are being shown on those
21 financial statements. When you -- no. I'm sorry. For
22 DeliverMed Holdings?

23 THE COURT: Yes.

24 MR. COX: Yeah, you will see those as
25 telemarketing expenses. That's --

1 THE COURT: Okay. Those are tel emarketing
2 expenses.

3 MR. COX: Right. Larry -- Larry Juni or talked
4 about the tel emarketing expenses being marketing expenses.

5 THE COURT: Okay. But all the money would go into
6 Medi cate.

7 MR. COX: Correct.

8 THE COURT: And Medi cate would pay Del i verMed's
9 expenses for tel emarketing?

10 MR. COX: Yeah, they would -- and they -- you can
11 see on the mail order, you can see on the various
12 financial statements the tel emarketing expense coming off.
13 You will also see it called call centers, as well.

14 So any expenses that were being incurred to get
15 the patients are shown on the financial statements as
16 tel emarketing expense, call centers and so on.

17 THE COURT: Okay. All right.

18 MR. COX: So they are being deducted off. That's,
19 that's l i t e r a l l y an expense of the business.

20 Q. (BY MR. COX) So the, the partners we have here
21 now are -- of course now we're at the spring of 2005. At
22 that time it was Ann and Mike and Joey. At some point did
23 the partners change?

24 A. The partners of the partnership?

25 Q. Yes.

1 A. Yes.

2 Q. Who -- when was that date changed and what was the
3 change?

4 A. What was the change or why was the change?

5 Q. No. When was it and what did it change to.

6 A. In -- we were in the process of selling -- Mike
7 requested to be bought out in 2007. We were in the
8 process of contacting what is referred to as mezzanine
9 finance people.

10 Which, a mezzanine finance person is a description
11 of a person, in effect if you think of a baseball stadium,
12 an upper seat. They take a position behind the bank and
13 all the other vendors and fund the, or loan money to the
14 company at a higher interest to buy it out.

15 And originally Mike wanted to be bought out, and
16 Joe and we wanted to stay on so Mike said you could buy my
17 portion out. So we had gone through a very lengthy
18 process with mezzanine finance people and got it down to
19 two mezzanine finance companies to buy Mike out.

20 One of the key factors in the mezzanine finance
21 group coming out was they said, the folks in particular I
22 think it was Patriot Capital said, if we're going to put
23 our money in here -- looked at my wife and I and said,
24 you're going to have to spend four or four days a week
25 down there in Washington Park because we're investing down

1 there and we don't -- we want to make sure that's -- we're
2 investing you.

3 My wife had very little interest in spending three
4 or four days a week in Washington Park, Illinois. And she
5 was becoming increasingly frustrated by not getting our
6 distributions, not -- always having excuses and she just
7 said, you know, I'm at that point now where I want to do
8 something good and I want to go out and do volunteer work.
9 She said, you take over for my role, you step in my shoes,
10 take over whatever is owed, take over complete operations.

11 So I started doing not only the portion that I was
12 doing but I started doing the mailing portion which she
13 was in charge of. So the whole percentage stayed the
14 same, 40, 50, 10, but the name Mark Swift occurred over
15 Ann Sickon.

16 Q. And that change occurred in August 2007?

17 A. Yeah, August, approximately. Late summer.

18 Q. And did, did Michael and Joe agree to that change
19 in the partners?

20 A. Yeah, we just went forward, yeah. It was not --
21 it was no big change to them because they were not
22 interested in who was doing the mailing and who was doing
23 the other aspects of DeliverMed as long as it was getting
24 done.

25 Q. Were there any profits owed to Ann at that time

1 that had not been distributed to her when that change took
2 place?

3 A. Yes.

4 Q. And did you reach an agreement with Ann and
5 Michael and Joey about those unpaid profits, who they
6 would go to?

7 A. Yes. We referred to it, I was going to step in
8 her shoes and take over her role and act in her capacity
9 in all areas now.

10 Q. And Mike and Joey agreed to that?

11 A. Yes.

12 Q. And that change would then have been retroactive?

13 A. Well, I was a shareholder or a part of the
14 partnership from that point forward. But I would take in
15 effect all of her, what is due her, yeah. Yes.

16 Q. Okay. So what did you call this mail order
17 business? What was it called?

18 A. We just referred to it as DeliverMed Medicate
19 Pharmacy, but I see it also referred to as Medicate
20 DeliverMed Pharmacy.

21 Q. Did you use the name Medicate in the calls?

22 A. No. We discontinued that pretty early on.

23 Q. Why?

24 A. Well, because for the reason you just brought up
25 earlier, if I say Medicate, did I say Medicate or did I

1 say Medi caid? And what happened i s, we were starting to
2 be confused where we were wi th the Medi caid department.
3 And so we started using the name Del i verMed Medi cate
4 rather, or j ust Del i verMed.

5 Q. Just to clari fy a bi t, i n August and September of
6 2005 when the business fi rst ramped up and began
7 operating, were you an owner of Del i verMed Hol di ngs LLC at
8 that time?

9 A. No.

10 Q. Okay.

11 THE COURT: Is thi s Exhi bi t 6?

12 MR. COX: Thi s i s Exhi bi t 6, Your Honor. And I' ll
13 put these on the screen for us here.

14 Q. (BY MR. COX) Just to clari fy i n that l ast
15 questi on, who was the owner of Del i verMed i f, i f you know
16 i n September or August of 2005?

17 MR. STINE: I' m going to object, Your Honor. I f
18 he wasn' t an owner, how does he know who was the owner?

19 THE WITNESS: I' m very fami li ar wi th the owners.

20 THE COURT: He may know. He may answer.

21 THE WITNESS: I' m very fami li ar wi th the owners.
22 The owners were my wi fe, who I' m very fami li ar wi th, and
23 she was parceli ng up part of her shares to our chi ldren.
24 Q. (BY MR. COX) Was that to your chi ldren or some
25 trusts or --

1 A. Yeah, children's trusts. Two were education --
2 all three were educational trusts, one converted to
3 disabled child trust or indigent child trust.

4 Q. All right. Let's take a look at Exhibit 6, page
5 17. We're looking here at an e-mail. This e-mail is
6 between you and Joe. What date is this Mark?

7 A. June 7, 2007.

8 Q. And please tell the judge what you are talking
9 about here, you and Joe, explain this.

10 A. In June, we had worked it down to maybe three or
11 four mezzanine companies to buy out Mike's interest. And
12 I had been working, started working with Larry
13 Schaltenbrand extensively in putting together like a
14 booklet, in effect, of -- a book of forecasting where we
15 are, showing the financials and things of that nature.

16 And one day Joey sees me doing this and he faxes a
17 whole bunch of these invoices to one of the mezzanine
18 companies. And they called me and said, what, what is
19 this? And then Joey sent me a copy of this thing. And I
20 was responding to that.

21 Q. Let me show you --

22 THE COURT: May I jump in here? Are we talking
23 about Plaintiff's Exhibit -- the invoices? Is that like
24 Plaintiff's Exhibit 91?

25 MR. COX: We are. I was just going to show that

1 to him and clarify that.

2 Q. (BY MR. COX) You see Exhibit 91 there. Is this
3 the, an example of the invoice you are talking about in
4 this e-mail?

5 A. This is an example, yes.

6 Q. And so what are you asking Joey here?

7 A. Well, I don't know, this has nothing to do with
8 the finance of the company, nothing to do with the taxes
9 or financial statements, and I'm asking him, what are you
10 -- stop sending these to people. I'm trying to sell this
11 company and be consistent throughout with the taxes. The
12 -- let's start there, trying to use the source documents
13 to agree to the general ledger to agree to the financial
14 statements to agree to the taxes so people can make sound
15 business decisions on if they're going to buy Mike out at
16 the value he was setting.

17 Q. And did you tell him not to do any of these
18 invoices?

19 A. I said, Joe, please don't do any more of these
20 invoices. We are trying to sell the company. We need to
21 be consistent. Retract these from everybody you -- I said
22 dent them to. I meant, sent them to.

23 Q. And how did he respond?

24 A. You are the only one that sees them.

25 Q. Meaning you, Mark Swift?

1 A. Yes. And I replied, thank you, thank you.

2 Q. Mark, was there ever an agreement with Medi cate
3 Pharmacy and with these partners that Medi cate Pharmacy
4 was to be paid the sum of \$7 per scrip tion -- per
5 prescrip ti on?

6 A. No.

7 Q. Now then, let's go back to when this business
8 started. When did, when did you actually find out that
9 the State had awarded this contract? When did that
10 happen?

11 A. It's interesting when you learn from the State
12 that you get a contract. They called us in early, late
13 July -- late June, early July, and said, we're going to go
14 ahead with you, we want to move forward with this
15 contract, do you have a pharmacy, we are ready to go, we'd
16 like to start in three weeks.

17 THE COURT: What year are we talking about?

18 MR. COX: 2005.

19 THE WITNESS: 2005.

20 MR. COX: Sorry, Judge.

21 A. And you have just spent 20 months working for this
22 and when it happens they want you to start
23 instantaneously.

24 Q. (BY MR. COX) Okay. So where are we in 2005?

25 A. Let's just say after the 4th of July period,

1 probably.

2 Q. Okay. So July 2005?

3 A. Early July.

4 Q. Okay. And then what happened in terms of this
5 business that you had been discussing in, when you finally
6 learn that you had the contract there in July 2005, what
7 happened?

8 A. Well, I approached -- I approach --
9 (Courtroom deputy sneezed.)

10 THE COURT: Bless you. Make sure that's in the
11 record.

12 THE WITNESS: Let it be known that plaintiff said
13 bless you.

14 A. What I do is, I called Joey and Mike and I said,
15 you know, we got it, we're going forward, this is really
16 happening and I need to now get you signed up as the
17 pharmacy for this contract. So we hired -- I hired -- my
18 wife hired and we met with Conlin and Associates. My wife
19 actually met with them, I didn't, the first time. Met
20 with Conlin and Associates and said, we need you to get an
21 approval of a pharmacy for this contract very fast.

22 MR. STINE: Your Honor, I'm going to object. If,
23 if his wife had this meeting, I mean, if he wasn't there
24 how does he have any foundation to say what happened at
25 this meeting? Hearsay.

1 THE COURT: He said he was there.

2 THE WITNESS: I was on the phone.

3 THE COURT: Sustained.

4 THE WITNESS: I was on the phone --

5 THE COURT: Pardon?

6 THE WITNESS: I was on the phone.

7 THE COURT: Oh, well, okay. You were on the
8 phone.

9 THE WITNESS: I wasn't at the meeting. I will
10 admit I was not at the meeting at, on Wacker Drive, I was
11 on the phone. They patched me in on the phone.

12 THE COURT: Okay.

13 Q. (BY MR. COX) And, so go ahead and tell us there
14 what happened.

15 A. Well, what happened is, we said to Conlin we were
16 going to contract with them to make sure all the paperwork
17 was done, expedite as quick as possible, have some people
18 go down to the State and they put together, Conlin put
19 together the contract with the State to have Medicate as a
20 participating pharmacy for it.

21 Q. Okay. And when did the operations of the mail
22 order business actually begin?

23 A. Actually began in late July, early August 2005.
24 And the reason I say late is because we had prepared
25 mailings that had gone out and we started getting patients

1 I like really early August.

2 Q. So the first patients start flowing from
3 DeliverMed down to Medicate Pharmacy in early August 2005;
4 is that correct?

5 A. Correct.

6 (Off the record.)

7 Q. (BY MR. COX) Turning to a slightly different
8 topic, when this business started was there an accounting
9 firm that was going to be doing accounting for the
10 business?

11 A. Yes.

12 Q. And who decided to use Schaltenbrand and
13 Schaltenbrand as accountants for the business?

14 A. That would have been made by Michael
15 Schaltenbrand.

16 Q. Were you asked?

17 A. No.

18 Q. So --

19 A. I was told that's who we were using.

20 Q. So, was Schaltenbrand and Schaltenbrand acting as
21 accountants for the partners, including your wife and
22 later you?

23 A. Yes.

24 Q. And as a partner, did you rely on them,
25 Schaltenbrand and Schaltenbrand, and trust Larry Senior

1 and Larry Junior and their firm to provide you with
2 accurate financial information?

3 MR. STINE: Your Honor, I'm going to object and
4 this time I'd like to know what dates he's talking about.
5 Is he talking about August 2007 forward when he's
6 testified he became a partner? Or is he talking about
7 prior to it when he wasn't a partner?

8 THE WITNESS: I could answer that.

9 THE COURT: Okay, set the time frame.

10 MR. COX: All right.

11 Q. (BY MR. COX) When is this taking place?

12 A. That was discussed at the meeting in, with, in
13 Springfield, Illinois, that we had to figure out the
14 partnerships. And so that would have been, like I said,
15 around April 2005.

16 Q. And were you and your wife from that point forward
17 as they did the accounting work, your wife as a partner,
18 later you as a partner, relying on them to provide you
19 with accurate financial information?

20 MR. STINE: Your Honor, again I'm going to object
21 to anything prior to August of 2007 when he testified that
22 he became a partner. If he wanted to rely as a partner
23 after that, he can answer that. If you want to bring Ann
24 Sickon in here to testify what she relied on prior to
25 that, I think she can do that. But I don't think this

1 witness can testify to anything prior to the date he
2 became partner.

3 THE COURT: Sustained.

4 MR. COX: All right.

5 Q. (BY MR. COX) At some point you, when you became a
6 partner did you rely on those financial statements?

7 A. Yes.

8 Q. Did you rely on the financial statements to
9 understand the business before 2005, reviewing those past
10 financial statements as well?

11 A. Yes, I did but --

12 MR. STINE: Your Honor, again I'm going to object.
13 His reliance is immaterial just like mine is immaterial if
14 I'm not a partner.

15 THE COURT: Well, you can't answer until I --

16 THE WITNESS: I understand.

17 THE COURT: -- until I make a ruling. I'm going
18 to overrule the objection. You may answer.

19 A. Okay. Now, make sure I answer your question
20 properly, okay? I obviously relied on them when I was
21 representing to the mezzanine company and using historical
22 data of 2004, 2005, 2006, 2007, of the accuracy of the
23 Schaltenbrand financial statements. Because I was
24 representing to these folks, this is what the business is
25 doing and we're buying, we're going to be borrowing money

1 to buy Mike out.

2 Q. (BY MR. COX) Now, from the beginning of the
3 business in 2005 were you asking for financial information
4 from Schaltenbrand and Schaltenbrand?

5 A. Say the question again, please?

6 Q. When the, from the time the business started were
7 you asking to be provided with some financial information
8 about what was going on with the business?

9 A. We may --

10 MR. STINE: Your Honor, same objection if he's
11 talking about pre-August of 2007.

12 THE COURT: All right. He already testified, Mr.
13 Cox, that he relied upon the historical data from 2004,
14 '05, '06 and '07, when he was representing to these folks
15 that, what the business was doing and they were trying to
16 buy Mike Schaltenbrand out. So I don't understand your
17 next question, if he's already looked at them.

18 MR. COX: Right. He's looking at those at a later
19 time. I'm asking him about if he was asking for
20 information as it went along, starting in 2005 to follow
21 what was happening with the business.

22 THE COURT: Okay. Well, then I will sustain that
23 objection because he was not a partner in 2005.

24 MR. COX: Right. But -- well, let me lay a little
25 bit of foundation. It may help, Judge.

1 THE COURT: Okay.

2 Q. (BY MR. COX) From the beginning of the business
3 in 2005 when Ann was a partner, were you involved with
4 Larry Schaltenbrand Junior in discussing some financial
5 information of the business?

6 A. Yes.

7 Q. And describe for the judge what your role was in
8 interacting with Larry Schaltenbrand Junior in terms of
9 the finances of the business from 2005 forward.

10 A. Well again, we had requested information several
11 times, had not received any --

12 MR. STINE: Your Honor? Who's "we"?

13 THE WITNESS: Can I --

14 THE COURT: You're going to have to say who's
15 "we."

16 THE WITNESS: I was just about to.

17 A. In May of 2006, my wife and -- Ann had dinner in
18 Las Vegas with Mike and his then fiancée, and we were
19 talking about getting information, and we had requested
20 then, too. And we had requested subsequent. They were
21 working on information and working on breaking apart and
22 figuring out how the mail order was doing.

23 Q. (BY MR. COX) And were you getting the information
24 that you and your wife had asked for?

25 A. In what time frame? I'm sorry.

1 Q. In what you have described for us. You said you
2 had asked for information. Did you get it?

3 A. Much later. We got it much later.

4 Q. About when did you start getting this information
5 you were requesting?

6 A. The first time Mike decided he wanted to sell the
7 business, which would have been the premarial asset
8 decision, which would have probably been late summer 2006,
9 we received some information then.

10 Q. Now, let's go back to the mailings. I want to
11 find out what Ann is doing in terms of work for this
12 business and what you were doing in terms of work for this
13 business. In doing the direct mailings, what, if any,
14 involvement did Ann have in that?

15 A. Well, she ran --

16 MR. STINE: Your Honor, I'm going to object. He
17 said he wasn't an owner of DeliverMed Holdings who they
18 said was doing the direct mailings. Why can't they bring
19 Ann in here and tell us what she was doing. I don't know
20 how he can testify to what somebody else was doing if he's
21 not an owner of the company doing it and he wasn't doing
22 it.

23 THE COURT: You have to lay a foundation.

24 MR. COX: All right.

25 THE COURT: And is she going to be testifying?

1 MR. COX: I understand that they will be calling
2 her as a witness.

3 THE COURT: Okay.

4 MR. COX: They have listed her as a witness. I
5 can lay a foundation, Judge.

6 THE COURT: Okay.

7 MR. COX: This is -- they all did this together.
8 I can explain it.

9 Q. (BY MR. COX) If you would then, Mark, tell us who
10 was involved in handling the direct mailings.

11 A. My wife, Ann Sickon.

12 Q. And were you present when that was being done?

13 A. Yes.

14 Q. And where was that being done?

15 A. In my house.

16 Q. And tell the Court how that was being done as you
17 observed it.

18 A. Well, I assisted in setting up the computer so I
19 was very familiar with it. We had a series of HP
20 printers, high speed printers, lined up. And each one had
21 a laptop in front of it. And what would happen is, the
22 first printer, we would print out the standard brochure,
23 the second printer would print out the letter where it got
24 merged with the person's name on it, and the third printer
25 would print out the mailing label. So they would grab all

1 three together, put in an envelope, fold, stuff, label,
2 meter the envelope and go.

3 Q. And were you engaged in that, actively in that
4 process?

5 A. Unfortunately, I spent many a nights folding. But
6 I, I was primarily trying to keep the printers and all the
7 data sources working together so they could stuff the
8 envelopes.

9 Q. And what did you observe as Ann's involvement in
10 that?

11 A. We had varying from as few as one to as many as
12 nine -- six, I think six would probably be the average,
13 women working around a table stuffing the envelopes.

14 Q. And was Ann involved in that?

15 A. She stuffed a lot of envelopes, yes.

16 Q. What would you estimate the number of hours Ann
17 was working in that part of the business?

18 A. Well, I can tell you the number of envelopes. We
19 stuffed over a quarter million envelopes over the time.

20 Q. Now then, where is the pharmacy physically located
21 that we are talking about here?

22 A. Kingshighway and Washington Park.

23 Q. Now, in addition to assisting with the mailings in
24 Chicago did you go to the pharmacy in Washington Park
25 starting in 2005 when the business began?

1 A. Yes, in 2005 we received an overwhelming response
2 of people wanting to sign up, which caused a very large
3 bottleneck from what was coming from DeliverMed to the
4 pharmacy. And I had spent quite a bit of time down there
5 that late fall, winter time frame, just assisting any way
6 I could, faxing faxes, while Joey was doing a pretty darn
7 good job of developing faxing systems. But initially it
8 was sitting on a fax machine punching each individual
9 number of doctors and faxing the prescriptions off, so it
10 was a lot of manual labor. We were throwing as many
11 bodies as we could at it.

12 Q. And how many days per month would you say you were
13 there at that time?

14 A. I would go two to three days a week. Two --
15 mainly two to three weeks a month, never four weeks.
16 Probably three weeks is average, so probably somewhere
17 between six and nine days a month.

18 Q. Now when, when you were there you were helping
19 Joey basically; is that right?

20 A. Joey and the -- and his wife was one of the people
21 also was sitting there working on this, so I was helping
22 those folks.

23 Q. Now, in that time frame starting in 2005 going
24 forward, in addition, or including the time you were
25 spending at the pharmacy, about how many hours a week were

1 you devoting to this business?

2 A. Including the pharmacy, including everything, 50,
3 60 hours a week. We were working on weekends, too.

4 Q. Now when you went to the pharmacy on the days you
5 have told us about, did you see Michael there?

6 A. I saw him once during the week. But he, pretty
7 much his routine was he'd come in on late Friday
8 afternoons, like around 2:00 or 3:00. But that's about
9 it. But I saw him one full day there with us during the
10 week.

11 Q. Well, how is it that Joey rather than Michael who
12 is a pharmacist was running the day to day operations?

13 A. Well, he was running the operations. There was a
14 pharmacist on duty, Terry Maddox at that time I believe.
15 And there was also a, later on a Steve Burroughs, I think
16 his name was.

17 Q. Were you ever present in the pharmacy when Michael
18 and Joey were discussing Michael reviewing the
19 prescriptions?

20 A. Yes, that --

21 Q. When was that?

22 A. That one particular day Mike just came in for a
23 few minutes --

24 Q. When, when was it? Can you give us a time frame
25 for the Court?

1 A. Well, let me -- I'll probably put it in the time
2 frame, we didn't have the automated Script Pro system in.
3 So we probably, that would be November, December of 2005.

4 Q. Okay. And what happened?

5 A. What happens is, there's these like white trays
6 with everybody's drugs in the trays and the paperwork.
7 And before they're sent out they have to be reviewed by a
8 physician -- I'm sorry, a pharmacist, for accuracy. And
9 Joe's crew was really putting out a lot of patients that
10 day and they were stacked, you know, 10, 15 high on a
11 table, and they were everywhere.

12 And Mike came shooting in. Joe, you know, needed
13 Mike to review these because the other pharmacists were
14 busy. Joe pressured Mike a little bit too much or for
15 what Mike's standards were, I guess, and Mike just
16 screamed and went off that he's too busy for this stuff
17 and screamed at him, got in his car -- or his truck,
18 rather, and shot down a few blocks or whatever and came
19 back a few minutes later and reviewed them all. And it
20 was rather embarrassing because I think Joe was screamed
21 at like nobody I have ever seen screamed at before.

22 MR. STINE: Your Honor, I'm going to object to the
23 relevance of that. I don't know where he's going but I
24 guess we'll find out.

25 THE COURT: I don't know either so --

1 MR. STINE: Okay.

2 THE COURT: The Court won't be considering that.

3 Q. (BY MR. COX) Did Joe ever make complaints to you
4 about the work he was doing compared to the work Mike was
5 doing?

6 A. Yes.

7 Q. What were those complaints and when were they
8 made?

9 A. Well, since Joe never got his 10 percent from
10 Mike, Joe would constantly, by constantly, maybe every
11 month or two months, he would come up to me and we'd go to
12 dinner at night and he would say, I need you to go to Mike
13 and help me get more percentage of business because I'm
14 doing all this work and he's doing nothing. And I would
15 say, that's not my business, I gave my 10 percent, you
16 know, you're on your own. My wife gave her 10 percent,
17 you're on your own. This is 2007, 2008, he was still
18 asking for more and more ownership.

19 Q. Now then, you have told us that Schaltenbrand and
20 Schaltenbrand was handling the accounting for the
21 partnership. Who was handling the receipt of money that
22 is coming into the partnership and the deposit of that
23 money into the bank?

24 A. Well it was, a lot, some of it was later on
25 electronically transferred. But Alisha did all the

1 deposits, I believe. I mean, sometimes she would bundle
2 them up and Joe would run them to the bank or sometimes
3 she'd bundle them up and Mike would run them to the bank.
4 But it was all, she is doing the recording for all of it.

5 Q. And who is Alisha?

6 A. I believe her name's Alisha Greer, and she's a
7 bookkeeper at the Washington Park facility.

8 Q. She -- what's her relationship to Medicate
9 Pharmacy?

10 A. An employee, bookkeeper at Washington Park.

11 Q. Did you participate in the receipt or deposit of
12 any money?

13 A. No.

14 Q. Did you have the authority to write any checks?

15 A. No.

16 Q. Who had the authority to write checks for the
17 partnership?

18 A. Only Michael.

19 Q. And did you rely upon and trust Michael to handle
20 that part of the business?

21 A. Yes.

22 Q. Let's take a look at Exhibit 20.

23 A. Are you putting that on the board, too, or no?

24 Q. I will. We have looked at this before but I have
25 a few questions for you about it. Now this is that

1 signature card we have looked at before for this bank
2 account at Bank of O'Fallon. And this bank account number
3 ends in what number?

4 A. Mine's redacted here. Account number?

5 Q. Okay. Let me ask you this: It says the name of
6 the account holder is DeliverMed. And if we -- as you
7 have heard, Michael Schaltenbrand signed this as president
8 of DeliverMed. Did you or anyone on your behalf authorize
9 him to use the name or open this account called
10 DeliverMed?

11 A. Nobody on my behalf or myself, no.

12 Q. Who was the president in 2006? Was there a
13 president of DeliverMed?

14 A. It's an LLC. In 2006, my wife was the president.

15 Q. Now, was this a partnership that you and your wife
16 had with them sometimes called Medicate Pharmacy
17 DeliverMed?

18 A. Was this a part of the partnership?

19 Q. No, I'm asking was there a partnership called
20 Medicate Pharmacy DeliverMed that you and your wife -- you
21 and previously your wife were partners of?

22 A. Yes.

23 Q. And was there a president of the Medicate Pharmacy
24 DeliverMed partnership?

25 A. No.

1 Q. When did you first learn of the existence of this
2 account in the name of DeliverMed?

3 A. During the discovery of these proceedings.

4 Q. And before the discovery in this lawsuit did you,
5 did Mike ever tell you about it or did you have any
6 knowledge of it --

7 A. No.

8 Q. -- at all?

9 A. No. I had no knowledge of it, no.

10 Q. Now looking at the tax ID number, you see that
11 there?

12 A. Mine's redacted. I think it's says Reporting
13 SSN/TIN. There's nothing after it.

14 Q. Or below? Upper left-hand corner?

15 A. Okay, I see it. Okay.

16 Q. What is that tax ID number?

17 A. I don't know.

18 Q. It begins two-zero?

19 A. Yes.

20 Q. Have you ever seen that before?

21 A. Yes, during these proceedings.

22 Q. Before the time you filed this lawsuit had you any
23 knowledge that there was such a tax ID number?

24 A. No, I did not.

25 Q. Did you authorize anybody to obtain this tax ID

1 number?

2 A. No, I did not.

3 Q. Did anybody ever tell you prior to these
4 proceedings that it had actually been obtained?

5 A. No.

6 Q. All right. While we are on this topic, let's look
7 at Plaintiff's Exhibit 30. Turning now to page seven, and
8 you have heard the testimony about this, we're not going
9 to go through this in detail.

10 Here Joey has testified that he got a Schedule C
11 and used that Schedule C to create this page in his tax
12 return and he got that from Schaltenbrand and
13 Schaltenbrand. Did Schaltenbrand and Schaltenbrand send
14 you or Ann a similar Schedule C to the one that Joey has
15 here?

16 MR. STINE: Your Honor, I'm going to object. If
17 he wasn't the partner, I don't know how he would know what
18 would be sent.

19 MR. COX: He can testify to whether he knows or
20 not.

21 MR. STINE: Okay.

22 THE COURT: Yeah, he can testify whether he knows.

23 THE WITNESS: Well, we -- can I answer now?

24 THE COURT: Yes.

25 A. We filed joint taxes. We never got a Schedule C

1 from Del everyMed, the sole proprietorship of Joey Siddle,
2 or from any Del everyMed.

3 Q. (BY MR. COX) When did you learn that the
4 partnership accountants had sent this Schedule C to Joey
5 and not to you or Ann?

6 MR. STINE: Objection, Your Honor. I don't think
7 it's been established that it wasn't sent to Ann.

8 THE WITNESS: Well, yes --

9 THE COURT: Well, I think if they file a joint tax
10 return, I think that he can testify that Ann did not -- I
11 mean that they did not receive it. So I'm going to allow
12 the questioning. I assume you -- well, I don't know
13 whether you are calling Ann or not but --

14 MR. STINE: Depends on what he says.

15 THE COURT: Okay. You can answer --

16 THE WITNESS: Can I answer that question now?

17 THE COURT: Yes, you can answer it.

18 THE WITNESS: Okay, so I answer it correctly, can
19 -- I hate to have you read it back to know, because I know
20 you have a stun gun.

21 Q. (BY MR. COX) Well, let me ask you again, when did
22 you learn that the partnership accountants had sent the
23 Schedule C to Joey?

24 A. Today's Thursday? Wednesday.

25 Q. Is that during the trial here?

1 A. Yes.

2 Q. Okay. Moving to the year 2006.

3 A. 2006 in this exhibit or --

4 Q. Yeah, we're just going to talk about 2006 here.

5 What I wanted to talk about is at some point did Michael
6 start indicating that he wanted to sell the mail order
7 business?

8 A. Yes.

9 Q. And about when was that?

10 A. Well, we were always trying to build the business
11 up and hopefully find a seller for it. But he wanted to
12 sell it in a very tight frame, tight time frame in say
13 June, July of 2006 so it wouldn't be back a premarital
14 asset.

15 Q. And let's look at page nine of Exhibit 6.

16 A. Can I clarify the last answer?

17 Q. Sure.

18 A. The objective of the very business that you build
19 is to have an exit strategy. Our exit strategy was some
20 day possibly sell the business out. And so Mike wanted to
21 do it on a tighter time frame.

22 Q. Well, let me ask you about that. Here we are,
23 let's take a look at this --

24 A. I'm sorry, what page?

25 Q. Page nine. I'll put it right up here. We have

1 I looked at this before but what I wanted to ask you about
2 is, at the time Mike is talking about needing to sell this
3 by August. At that point in time were you or Ann
4 indicating anything about selling the business?

5 A. No.

6 Q. How about Joey? Was he talking about selling the
7 business at that time that you heard?

8 A. Not talking to me about selling the business, Joey
9 did not.

10 Q. So only at this point Michael is the only one
11 wanting to sell the business?

12 A. Yes.

13 Q. And when you received this, you see what he's
14 saying here at the top about the premarital and so on?
15 Did you ever talk to Michael about why he wanted to sell
16 the business at that time?

17 A. Yes.

18 Q. Did you call him after you got this e-mail and
19 discuss it with him?

20 A. I called him for sure, and I remember I think I
21 e-mailed him and I said, premarital asset? I didn't know
22 he was getting married.

23 Q. And tell the judge about that conversation with
24 Michael about this.

25 A. Well, I called Mike and I -- we finally had got a

1 hold of him and he said that he had just got engaged and
2 he was going to get married and he wanted to sell this
3 business as soon as possible. He didn't want it to be
4 ownership with a premarial asset, he didn't want her to
5 be part, have any ownership in it. And I told him, there
6 is no way you can sell a business in less than 30 days
7 unless you put it on an auction block. It was just
8 impossible.

9 Q. Well, let's go to page six of Exhibit 6. In this
10 e-mail you are talking about a potential sale price. Why
11 are you coming up with a potential sale price at this
12 time?

13 A. Well, we had some discussions about, what is this
14 worth, what we're doing? As in, I went out and talked to
15 some people and got a couple interested parties, but what
16 is it worth? Because Mike wanted to cash out some of the
17 business at that time. Again.

18 And we took a calculation based upon numbers we
19 got from different sources. We got, it reads here, it
20 says, based on Joey's number of currently servicing 4,000
21 patients. And at a sales time in, you know, a month or so
22 I get another 400 patients, based upon their figure of
23 \$368 of revenue, which is an accurate number, you multiply
24 them together you get your monthly revenue, analyze it.

25 Schaltenbrand statements were showing -- or

1 Michael actually sent an e-mail, said about, he was
2 getting about 17.1 percent profit now. And that was in
3 one of his e-mails. And we multiply them together, and we
4 used 8 times at that, because that was, one of the folks
5 picked the midpoint, told me to pick a midpoint that I
6 talked with, between 7 and 9 times earnings.

7 Q. Now this method that you've got here, is this a
8 common method that you used?

9 A. Well, it's a model method that a lot of people use
10 in businesses that involve --

11 MR. STINE: Your Honor, I'm going to object unless
12 they can lay a foundation.

13 THE COURT: Sustained.

14 Q. (BY MR. COX) Okay. Is this the same, are you
15 using the same model here that was used by the
16 Schaltenbrands in arriving at their valuation?

17 A. Basically.

18 Q. Okay. And, and where were you getting these
19 numbers?

20 A. Well, Joe gave me that he was servicing 4,000
21 patients in June of that year. And we calculated our
22 average patient per month because we were doing monthly
23 shipments, it was \$368; that came off of the computer
24 system showing how much, and we just divided by the number
25 of patients. So I multiplied those together, annualized

1 it, 12 months, showing what 12 months sales were, 17.1
2 percent. Mike sent me an e-mail. I say, are you still
3 getting 23 percent profit? He said, no, we were getting
4 less now, about four or five percent less because of Part
5 D in the year 2006. So I used that 17.1. Came up with an
6 annualized projected income -- shouldn't say income, it
7 says revenue -- times 8, because I took the multiple of,
8 between 7 and 9, and you got \$26 million of potential sale
9 price.

10 Q. So at this point you're, you're talking with them
11 about beginning the process of perhaps selling it; is that
12 right?

13 A. Yes.

14 Q. But did you, did you know the time frame that
15 Michael wanted to sell it on until you got the later
16 e-mail about the marriage?

17 A. Well, yes, I mean it was, it was very
18 serious-like, 30 days I gotta sell this. Then it brings
19 reality to it rather than just, we're talking with people,
20 seeing what it's worth. But "I gotta sell this in 30
21 days, I'm getting married" brought real serious attention
22 to it.

23 Q. After you sent this e-mail did Michael ever
24 communicate to you that he disagreed with the calculation
25 you had made?

1 A. I don't recall him ever responding to it in any
2 fashion.

3 Q. All right. After Michael told you he wanted to
4 sell the business, please tell the judge what steps you
5 took to actually sell the business.

6 A. Well, I told him I couldn't sell it in 30 days for
7 a premarital asset. So I had took my Rolodex and called a
8 bunch of people and found out who out there, what's the
9 best way to approach the sale of this business, who would
10 be interested. Would it be interested in selling it to a
11 corporation? Would it be interested in selling it to
12 somebody who wants to get into the business? Would it be
13 better to sell it to these management groups? And it was
14 suggested from a couple of different sources that I talked
15 to, and I talked to a lot of people, that best approach
16 is, if you wanted to stay in the business, you can make a
17 mezzanine finance transaction where you buy your partners
18 out, is the best methodology to use.

19 Q. Did you have any success in finding a buyer at
20 that point?

21 A. Well, you have a buyer for Mike's shares. You
22 have mezzanine funds. And we had eight term sheets that
23 we, from eight organizations willing to do the mezzanine
24 financing, and we got it down to two or three that we
25 decided would make the best -- by "we," I'm talking about

1 myself and some friends that I kind of discussed in the
2 industry how mezzanine works, that I could present it to
3 Mike as potential buyers for his business. Patriot
4 Capital, a group out of Boston, I can't remember their
5 name right now, and then another group out of New York,
6 Halbren Capital [phonetic]? And they're mezzanine finance
7 folks. Two of them flew to Chicago to meet with me to go
8 through the potential sale. We got very far down the
9 road.

10 Q. All right. Let's take a look now --

11 THE COURT: What was the time frame for this?

12 THE WITNESS: This -- can I answer?

13 MR. COX: Yes.

14 THE COURT: Yes. If I ask a question, you can
15 answer. If they ask questions, it depends.

16 THE WITNESS: I got the ground rules.

17 This would have been, this would have been during
18 the very hot summer of 2007, because I remember one of my
19 -- I had to pull over, coming back from the pharmacy I had
20 to pull over at the rest stop for two hours and have a
21 conference call with some folks about how we wanted to
22 price it, how we wanted to look at doing a mezzanine deal.

23 Q. (BY MR. COX) Did that ultimately take place?

24 A. No. Michael decided August, September time frame
25 that he changed his mind. He didn't want to sell.

1 Initially he said these are the conditions for selling,
2 and they were conditions that I could not possibly imagine
3 any finance person agreeing to. And then he said he just,
4 why would he -- he told me he would be a fool to sell
5 because this thing is growing. It's getting bigger.

6 Q. So how much time would you estimate you had spent
7 trying to realize this sale for Michael?

8 A. I spent a couple of hours every day for probably,
9 you know, five days of course, not weekends, but four?
10 Three months? You're always faxing. You're always
11 following through.

12 Q. Let's take a look now at this -- this is page ten
13 of Exhibit 6. In the first sentence, this is an e-mail
14 from Mike to you; is that correct?

15 A. Yes.

16 Q. And what's the date of it?

17 A. It's September 14, 2006.

18 Q. He's writing to you, and what's he saying to you
19 here in the first sentence?

20 A. Remember when we spoke a month ago about my taking
21 a distribution of 187,000 to pay off -- to pay Lisa off?

22 Q. Then what does he say?

23 A. I did so at the beginning of September.

24 Q. So is he talking about taking a distribution?

25 A. Yes.

1 Q. Before we continue with this, let's talk just a
2 little bit about a distribution. What is a distribution?

3 A. A distribution is taking a distribution of the
4 profits, or a distribution is taking the profits plus the
5 basis of the company. You are taking money out of the
6 company for your personal use.

7 Q. Did you have any understanding or agreement with
8 Michael or Joey at any time about how the three of you
9 would handle distributions?

10 A. Well, yeah, we would to it on a pro rata basis of
11 50, 40, 10. My wife was same thing, 50, 40, 10.

12 MR. STINE: Objection, Your Honor. No foundation
13 as to what his wife's agreement was or --

14 THE COURT: Overruled. That's already in
15 evidence.

16 Q. (BY MR. COX) And did you agree or was there any
17 agreement about Michael taking this 187 out of the
18 business in September 2006?

19 A. I don't remember speaking to Michael about taking
20 187. And this is done, notification is done two weeks
21 after it was taken because he says the beginning of
22 September.

23 Q. And what does he say about what's left over after
24 he took this 187,000-dollar distribution?

25 A. There is only about 50,000 to 75,000 left to use

1 for the call center or distributions. We need to sell
2 this part of the business and start again in Iowa, e-mail
3 and let's talk -- let's pick a time to talk before the
4 wedding. Thanks, Michael Schaltenbrand.

5 Q. Now, when he says to pay Lisa off, what is that?
6 What do you understand that to mean?

7 A. Well, subsequent to this e-mail I found out what
8 he said is he was trying to buy out part of his alimony
9 and child support for what he referred to as pennies on
10 the dollars. I didn't know what that meant. But 187,000
11 was gone.

12 Q. So at this point, here we are in 2006, your --
13 Ann's the partner; is that right?

14 A. Yes.

15 Q. But Mike is communicating to you as though you're
16 a partner, explaining the distribution he took and what's
17 left to pay and so on; is that correct?

18 A. Well, the reason he's mainly communicating to
19 me --

20 MR. STINE: Objection, Your Honor. I don't know
21 how he knows the reason Mike Schaltenbrand was
22 communicating with him.

23 THE COURT: Sustained. Why don't you start --
24 looks like there was an e-mail on September 6th from Mr.
25 Swift to Mr. Schaltenbrand that -- start at the bottom and

1 go up. It says, subject, update report. And it says,
2 thank you, Mark Swift.

3 And then Mr. Schaltenbrand responded to that
4 e-mail the next day or on -- yeah, the next day, September
5 14th.

6 MR. COX: Well, I don't know that he's responding
7 to an e-mail. Mark says thank you to some other thing
8 he's received and Mike is starting with a new thing here.

9 THE COURT: Well, why don't you explain to the
10 Court what the September 13th e-mail was about, Mr. Cox?

11 MR. COX: Well, I would, Judge, except I don't
12 have that September 13th e-mail.

13 THE COURT: It's right here. It says, subject,
14 update report.

15 MR. COX: I thought you meant the one that Mark
16 was responding to.

17 THE COURT: No, the one that Mark sent.

18 MR. COX: Okay, I can ask him about that, surely.

19 THE COURT: Yeah.

20 Q. (BY MR. COX) Mark, at the bottom we see here an
21 e-mail from you, and you are sending it to both Mike and
22 Joey; correct?

23 A. Yes.

24 Q. And what is the, what are you saying in this
25 e-mail? What do you say?

1 A. Well, it talks about how there's an attachment of
2 an updated report.

3 Q. So you had received some sort of report and you
4 were thanking them for sending you some kind of report?

5 A. Yeah.

6 Q. Okay.

7 THE COURT: Was that an attachment to the e-mail?

8 THE WITNESS: It doesn't say there's --

9 MR. COX: It's not an attachment to this e-mail.

10 THE COURT: Okay.

11 Q. (BY MR. COX) It's a thank you for a previous
12 e-mail and report he had received. And then the part that
13 Mike is writing is really a new discussion that he's
14 initiated.

15 Now then, the amount that he's talking about here,
16 the 50 to 75,000, he's saying that's all that's left to
17 pay for what?

18 A. For the call center or distributions.

19 Q. So the call center would be to pay DeliverMed for
20 -- Holdings for its expenses, is that what he's talking
21 about when the call centers --

22 A. Yes.

23 Q. And distributions would be what?

24 A. Distributions to be received at that time by Ann
25 or Joe.

1 Q. So he has taken out 187,000 for a distribution and
2 left only that amount to pay for both marketing and
3 distributions for you and Joey?

4 A. No, for Ann and Joe.

5 Q. I mean Ann and Joe, right. Now, was that enough
6 to pay the call center at that time and to distribute
7 moneys to other partners? Was that enough left?

8 A. At this time frame we were doing aggressive
9 marketing, so that would not be enough money to pay the
10 call center. This \$187,000 was a shock to the system, as
11 you are trying to sell a business, somebody's grabbing
12 money out of the accounts and changing the next month's
13 financials and representing the company, company situation
14 to people that it's just not so. I mean, it looks like a
15 big kitty you just grab money out of.

16 Q. Did you have any discussions with Michael about
17 taking distributions out of the business to pay for
18 personal expenses?

19 A. Personal expenses?

20 Q. Right. Like paying alimony to his wife and so on,
21 did you talk with him about that?

22 A. Well, I later learned, later in talking about we
23 learned in 2006, when we were -- 2007, a lot more, that
24 there was an automatic withdraw out of the company to pay
25 his ex-wife every, I think it was the third Friday of

1 every month? Or something to that effect. And it would
2 range from \$6,250 a month to as high as, which they would
3 then add another one and there would be two automatic
4 withdrawals that drove it to \$16,250 a month. Whether
5 there was bills to pay or whatever, it came out every
6 month.

7 Q. Did you talk to Mike about taking these
8 distributions, these moneys out of the business and have a
9 conversation about that?

10 MR. STINE: Your Honor, I'd like a time frame.

11 THE COURT: Time frame.

12 MR. COX: I was going to ask him when, if he said
13 there were conversations, I'll ask him when.

14 THE COURT: Okay.

15 A. The first time I noticed it was when we were going
16 through --

17 THE COURT: That's not the question.

18 THE WITNESS: Okay. I'm sorry.

19 THE COURT: The question is: Did talk to him?

20 THE WITNESS: Yes.

21 Q. (BY MR. COX) And when was that --

22 THE COURT: Next question is: When?

23 MR. COX: That's the next.

24 THE WITNESS: That would be late 2006.

25 Q. (BY MR. COX) Okay. Tell us about that

1 conversation.

2 A. I first approached Larry Junior when I saw it in
3 his office, and that was one of the first times I met
4 Larry Junior, was late 2006, asking him what these were.
5 Larry Junior stated that that's paying for his ex-wife's
6 alimony and child support.

7 And I said, well, wait a minute, it's coming out
8 of the business? And he said --

9 MR. STINE: Your Honor, I'm going to object on the
10 basis of hearsay.

11 THE WITNESS: I was there.

12 THE COURT: Sustained.

13 THE WITNESS: Okay.

14 Q. (BY MR. COX) So what did you do then?

15 A. I asked Mike about that, that distributions that
16 he was taking for -- an automatic distribution every third
17 Friday or some, I think it was the second or third Friday
18 of every month. And he explained that he had to pay her
19 that money for a number of years.

20 Q. (BY MR. COX) And what did you say?

21 A. That's a distribution to you. And we had a
22 conversation back and forth where he would say, no, it's
23 not a distribution, it's a distribution to my ex-wife.
24 That doesn't count towards me, it's her money now. I
25 said, no, it comes out of the partnership. You are taking

1 away from the partners. It's your distribution. And I
2 don't think he ever understood what I was referring to.

3 Q. All right.

4 THE COURT: If you're moving on to another topic,
5 we're going to recess until 1:00.

6 MR. COX: All right. That's fine, Judge. Thank
7 you.

8 (Court recessed from 11:56 a.m. to 12:59 p.m.)

9 THE COURT: Okay, we are back on the record. Mr.
10 Swift is still on the stand.

11 Mr. Cox, you may continue your inquiry.

12 MR. COX: Thank you, Judge.

13 Q. (BY MR. COX) We are now looking at page seven of
14 Exhibit 7.

15 THE COURT: Of Exhibit 7?

16 MR. COX: Yes -- 6 -- I'm sorry, page 7 of
17 Exhibit 6.

18 Q. (BY MR. COX) We see at the bottom an e-mail you
19 have written to Mike. This is May the 20th of 2006 now
20 and it looks like you've -- what are you talking about
21 here at the bottom?

22 A. Would you like me to read it or --

23 Q. Just explain to us what your subject is.

24 A. The revenue schedule for what we are doing for the
25 mail order business.

1 Q. And what are you talking about there in the last
2 line, we are shaking more revenue out with the audit on
3 patient files. What's going on there?

4 A. Patients receive their drugs every 30 days. The
5 system had some major problems where, if a person ran out
6 of prescription refills, they would fall off the register
7 in the computer system. So when we were referring to
8 shaking out more revenue is we'd go back and look and see
9 what patients we lost that way, try to get, get them on
10 the program.

11 Q. Is that something you were assisting with?

12 A. Yes, I was.

13 Q. Now, looking above here, is this a response that
14 you receive from Mike there at the top?

15 A. Are you referring to one dated Wednesday, May 24,
16 2006 --

17 Q. Right.

18 A. -- that section? Yes. I received that.

19 Q. And what is Mike saying to you in this e-mail?

20 A. He's saying that he -- Mark, I have issued \$50,000
21 to myself in distributions this month. Mike.

22 Q. Did the partners receive a proportional
23 distribution at that time?

24 A. No.

25 Q. Did you talk with him -- did you talk with Mike

1 about that particular 50,000-dollar distribution, what it
2 was for?

3 A. Yes.

4 Q. And when did you talk with him?

5 A. Around that time frame.

6 Q. After you received the e-mail?

7 A. Yes.

8 Q. And did you talk with him by phone?

9 A. In person.

10 Q. All right. And tell the judge about that
11 conversation.

12 A. I --

13 THE COURT: When was that?

14 MR. COX: He said just shortly after he got this
15 e-mail.

16 THE COURT: Where was it?

17 Q. (BY MR. COX) Where did you have that
18 conversation?

19 A. At the pharmacy in Washington Park.

20 Q. All right. And what was said at that time?

21 A. That he had took a 50,000-dollar distribution to,
22 because he was in the middle of doing his project in his
23 home. He was doing some work on his home. I don't really
24 recall what it was.

25 Q. All right. And did you talk with him then about

1 him taking that distribution?

2 A. Yes.

3 Q. And what was said?

4 A. Well I asked him, okay, I mean, you'll put it on
5 the schedule of your distribution but we have to get, the
6 rest of us have to catch up on distributions. My wife
7 hadn't got one in quite some time then. I don't know if
8 Joey did or not.

9 Q. All right. And what was Mike's response?

10 A. We will catch up.

11 Q. Did they?

12 A. No.

13 Q. We are now to page eight --

14 THE COURT: Hold on a second. I want to stay on
15 seven.

16 MR. COX: Sure.

17 THE COURT: I revised and updated the revenue
18 schedule. Where -- whose rev -- you know, who's revenue
19 schedule and where did it come from.

20 MR. COX: Oh, sure, I'd be glad to.

21 Q. (BY MR. COX) The Judge is asking about the lower
22 e-mail here about the revenue schedule. Would you explain
23 what that is, where it came from, and how it was created?

24 A. We would take the numbers off of the computer
25 system about the adjudicated claims for that week, and I

1 would record it on a revenue schedule so we could start
2 trending and seeing how weekly, monthly and annual sales
3 would go.

4 THE COURT: So was it your revenue schedule or was
5 it Joey's revenue schedule?

6 THE WITNESS: This was the one that I did for the
7 company. I was developing like bar charts about how sales
8 were going.

9 Q. (BY MR. COX) And then you say in the second
10 sentence here, the revisions are based upon the final
11 December 31, 2005, financial information your father's
12 provided. What does that mean?

13 A. He provided what the profitability percentages
14 were for the, from the financial statements of December
15 31st, 2005, for Medicate Pharmacy Central.

16 Q. I see. And so at this point you are relying on
17 that financial information to help you revise and, or
18 these schedules?

19 A. Yes.

20 Q. And were you relying on them to be accurate?

21 A. Did I rely on my schedules to be accurate?

22 Q. No, were you relying on Schaltenbrand's
23 information to be accurate at this time?

24 A. Yes.

25 Q. Okay. And at the same time then you go on to say

1 you are trying to get more revenue by, as you described
2 it, shaking it; is that right?

3 A. Correct.

4 MR. COX: Does that answer your question, Judge?

5 THE COURT: The last sentence says, we are shaking
6 more revenue out with the audit on the patient files.

7 Is the more revenue coming from the financial
8 statement of Schaltenbrand or from the revenue schedule?
9 Where is the shaking coming from?

10 THE WITNESS: Neither. We were going into the
11 patient files because a patient was listed on the, on the
12 pharmacy system by the number of refills they had. If a
13 patient ran out of refills, it didn't give us an
14 opportunity at that time to contact a doctor and get more
15 refills on those prescriptions. So what we started to do
16 is go through line -- patient by patient and finding those
17 that were falling off the system because they didn't have
18 refills, contacting the doctor or the patient to see if we
19 could get more refill orders to fill more orders.

20 THE COURT: Well, that last sentence to me
21 implies, and correct me if I'm wrong, that you are making
22 more money than you thought, based on, from the financial
23 information provided. Is that a wrong assumption?

24 THE WITNESS: Yes, it is. It means -- like using
25 me as an example, say I have four refills on my drugs.

1 Every month I would get a refill. If I had zero refills,
2 not only would I get not my refill because there's no
3 refill to fill for the patient for their prescriptions,
4 but my name would fall off the list as an active patient.

5 THE COURT: I see.

6 THE WITNESS: And we would get no warning that
7 they weren't an active patient so we couldn't do anything.

8 THE COURT: Go ahead.

9 Q. (BY MR. COX) Did Mike to your knowledge ever take
10 a distribution to pay his taxes?

11 A. Yes.

12 Q. About how much was that?

13 A. Several hundred thousand dollars. I don't
14 remember the exact amount. I'm sorry.

15 Q. And at that time were the other partners given a
16 -- well, when was that, first of all.

17 A. Approximately April 14th, 13th, of 2007 -- 2008.

18 Q. And did you get a pro rata distribution as a
19 partner at that time as well?

20 A. No.

21 Q. How about Joey, do you know if he got one?

22 A. No.

23 Q. No, he did not --

24 A. No, I know he did not.

25 Q. Very good. I know I didn't ask that question very

1 well.

2 So, so Mike's taking a lot of money for taxes but
3 you are not getting a distribution. Joe is not getting a
4 distribution.

5 A. Correct.

6 Q. All right. Let's take a look at page 42 of
7 Exhibit 6. This is an e-mail from Mike to you. What's
8 the date?

9 A. October 29, 2007.

10 THE COURT: Question: As of this date is Swift a
11 partner?

12 THE WITNESS: Yes.

13 MR. COX: Yes.

14 THE COURT: Okay.

15 Q. (BY MR. COX) And let's take a look at the first
16 sentence.

17 A. Mark, I spoke with Alisha and she has 177K --
18 meaning 177,000 -- in account, but it was 145,000 for
19 Friday. I will check with her on Wednesday for A/R --
20 meaning accounts receivable. Part of the problem she says
21 is that IPA -- Illinois Public Aid -- is only paying for a
22 couple of days at a time versus a week at a time
23 previously.

24 Do you want me to keep going?

25 Q. No, that's fine. So, so the issue here appears to

1 be that there's very little money in the account to pay
2 for things; is that correct?

3 A. Correct.

4 Q. And at this time we were able to determine, is
5 Mike still taking an automatic distribution for alimony of
6 6250 and additional moneys, is that's what's going on in
7 this time period?

8 A. Yes. However, it's a minimum of 6,250 and a
9 maximum of 16,250.

10 Q. Was there ever a time in this partnership with,
11 with Mike and Joey that getting distributions was not a
12 problem?

13 A. No.

14 Q. Please describe for the judge generally what the
15 problems were with getting distributions.

16 A. We never would get our proportionate share of the
17 distributions, as I'm saying Joe or myself. We would be
18 told that there's no money in the account. We would be
19 told that there is -- we're not making money. We would be
20 told there's bills coming in. We would be told a variety
21 of reasons.

22 Q. Were you ever shown the credit cards statements of
23 the business credit cards or the ones in Mike's name that
24 were being paid from the business --

25 A. Yes.

1 Q. -- either one?

2 A. Yes.

3 Q. When were you shown those?

4 A. During these proceedings.

5 Q. After the lawsuit was filed?

6 A. Yes.

7 Q. Back at the time charges were being added to them
8 were you aware of those charges or were those shared with
9 you?

10 A. Let me rephrase. Are you saying when the charges
11 occurred was I aware of them?

12 Q. Were you aware of what was on the credit card
13 statements at the time they were being charged.

14 A. No.

15 Q. Did you know that Mike was charging personal
16 expenses that were being paid by the business on these
17 cards?

18 A. No.

19 Q. When did you learn he was doing that?

20 A. When we started getting through discovery and
21 subpoenas, credit card statements, many of the things
22 looked unusual.

23 Q. Did you know for example that the business had
24 paid about \$10,000 for Mike's wedding reception?

25 A. No.

1 Q. Did you attend the wedding?

2 A. Yes.

3 Q. Did Mike say anything to you at the wedding about
4 paying for the wedding?

5 A. I was very, very impressed with the wedding. It
6 was beautiful. The setup was beautiful. And my wife and
7 I approached him to shake his hand and congratulate him
8 after the ceremony part, prior to the reception, and I
9 said, this is amazing. I said, I just can't believe how
10 beautiful this is in such a short time you put it
11 together. He said, oh, that's okay, you're paying for
12 this.

13 Q. Did you understand at that time what he meant?

14 A. I just assumed he was congratulating on the
15 success that everybody's been enjoying from the mail order
16 business. I did not know that, what it meant.

17 Q. All right. Let's go to page 91. And what is this
18 e-mail?

19 A. I was -- the bottom part in December 26, 2007 --

20 Q. Are you on page 91?

21 A. No, I'm on 92. I apologize.

22 Q. Turn to 91, please.

23 A. That was basically the same one on the next page.

24 I was inquiring about a 250,000-dollar payment I saw from
25 Central, which is also called Washington Park, to what was

1 called St. Mary's, then became East St. Louis, but also
2 referred to in many instances as Kenneth Hall Pharmacy.

3 And \$250,000 was transferred from the Washington
4 Park financials to the Kenneth Hall or East St. Louis
5 pharmacy and I was inquiring was he taking a distribution
6 or, or was he paying a loan to or making a loan to the
7 other pharmacy? And I was inquiring on that.

8 Q. Why did you think it had to be one or the other?

9 A. Because I cannot think of a third option it could
10 be. It's either as a loan or he took it as a
11 distribution.

12 Q. So, did he respond to your question here in this
13 e-mail?

14 A. No.

15 Q. Did you --

16 A. But he responded to the e-mail but he didn't
17 respond to the question.

18 Q. That's what I mean, he didn't answer the question?

19 A. He did not answer the question.

20 Q. Were you ever able to figure out what he was doing
21 here transferring money from one to the other, what it
22 was?

23 A. I could not figure out what that \$250,000 was for.
24 If it had ever been paid back or if it was a distribution.
25 He could not figure that out.

1 Q. If you would, Mark, please explain to the judge
2 what, if anything, you saw happening in the business as
3 far as the relationship between these distributions and,
4 and also the payment of Mike's personal expenses and the
5 need to, for the business to borrow money. Was there a
6 relationship between the two that you saw in reviewing the
7 financial records?

8 A. Yes. In reviewing the financial records, I saw a
9 lot of times that large distributions are being taken,
10 taking away the cash from operating the business, which
11 then forced the business to go borrow funds from the bank
12 to do its operations.

13 Q. And --

14 MR. STINE: Your Honor, could we get a time frame
15 on that?

16 THE COURT: Yeah, set a time frame.

17 MR. COX: Sure.

18 Q. (BY MR. COX) What time period are you seeing that
19 happen?

20 A. Now. And post that, 2005 through 2010, and now I
21 see it in the papers we got for 2011.

22 Q. So it was an ongoing issue from day one forward?

23 A. I've seen it going on from day one.

24 Q. Now then, let's take a look at page 133. And
25 before we take a look at that page, let me ask you this

1 question: What was money being borrowed for in the
2 business, the different debts? What was that for? What
3 do you do with the money?

4 A. Well, there is two things that the loan was
5 supposed to be for. The first was, we would be borrowing
6 money from the bank for the marketing. Then as we got the
7 revenue from the marketing results, we had that money back
8 in our account to pay back the bank. Then a large part of
9 the loan -- but the remaining exclusive loan should be
10 what we refer to as floating -- float for the A/R. In
11 other words, borrow 85 percent of our receivables so that
12 we could fund more purchases of drugs to create more
13 receivables and continually cycling through the process,
14 so that at any one time you should have 85 percent of your
15 receivables should be the maximum of your bank loan.

16 Q. So if the money's coming in and you have this loan
17 to help you get the money to come in, I guess the idea is
18 to, you should pay back that loan really as it comes in?

19 A. Right. As soon as your money comes in, you pay
20 back the loan. And you can reborrow money if you want to
21 have more receivables.

22 Q. And over time did you see the debt increase in the
23 business?

24 A. Yes.

25 Q. And why was that, based on what you were looking

1 at in the financial statements of Schaltenbrand and
2 Schaltenbrand?

3 A. Well, it was increasing the loan because we were
4 increasing our sales which was increasing our receivables.
5 And in recent years that paperwork we got, we saw the
6 revenue drop between 2009 to 2011 by \$2 million a year,
7 but the loan went up \$300,000 and I can't figure out it
8 makes any sense whatsoever.

9 Q. What effect would the distributions that are being
10 taken out by Michael Schaltenbrand have on that, what you
11 have just described there?

12 A. The money has to come from somewhere. It either
13 comes from profits or he's been borrowing from the bank
14 loan.

15 Q. All right. Let's take a look now at 133. Here we
16 are in December of 2008. Now this is an e-mail from Mike
17 to you. It looks like it's around Christmas. And what is
18 the message here he's giving you with respect to
19 withdrawal of moneys from the line of credit? First of
20 all, tell us what the line of credit is.

21 A. The line of credit was the bank loan at Bank of
22 O'Fallon.

23 Q. How did that work?

24 A. Bank of O'Fallon's loan was based upon
25 collateralized assets, 85 percent of our receivable

1 balance plus we were allowed to borrow a percentage of our
2 inventory. We didn't really carry a lot of inventory, so
3 it wasn't that big of a number. And those two combined
4 gave you your borrowing base that you could borrow to buy
5 more drugs and service your patients.

6 THE COURT: Could I ask a question here? Mr.
7 Swift, were you a borrower, in other words, a signer to
8 these bank loans and line of credit to Bank of O'Fallon?

9 THE WITNESS: Do you mean a guaranty, sir?

10 THE COURT: Yeah, or did you, did you sign the
11 documents to borrow the money? Were you one of the
12 signators to the documents?

13 THE WITNESS: Not to the documents, but to the
14 guarantor.

15 THE COURT: Pardon?

16 THE WITNESS: Not to the documents, loan
17 documents, but to the guarantor. Personal guaranty, I
18 was.

19 THE COURT: Okay.

20 Q. (BY MR. COX) And then it says McKesson. Would
21 you talk about what that is, please.

22 A. Prior to AmeriSource Bergen, a major or larger
23 drug distributor was McKesson, which is a large
24 corporation.

25 Q. And so what is he saying he's to do here with the

1 line of credit with respect to that?

2 A. Should I read it?

3 Q. Well, just explain it to us.

4 A. Well, he said a McKesson bill came due and he had
5 to pull a large amount from our account on Friday and I
6 will -- and I had to pull \$35,000 from the line of credit
7 to insure that all checks would clear. In addition, I'm
8 delaying paying \$30,000 worth of bills to accomplish this.
9 As you see it would be nice to take a distribution but
10 there are no funds from which to distribute from.

11 Q. All right. So there is a problem money-wise at
12 this point?

13 A. Yes.

14 Q. All right. Now in reviewing the financial
15 statements have you been able to determine why there was a
16 money problem at that point?

17 A. Large distributions were taken out by Michael.
18 Large distributions were taken out to pay his personal tax
19 bills.

20 Q. All right. Now then, there is a note down here at
21 the bottom about a John Tollefson. We should release John
22 Tollefson, it's costing us \$10,000 a month.

23 Let's just take a moment and talk about John
24 Tollefson and who he is and how he fits into this picture.
25 First of all, do you know John Tollefson?

1 A. Yes.

2 Q. How long have you known John Tollefson?

3 A. 27 years.

4 Q. And has he worked for you or DeliverMed Holdings
5 as a consultant before he became a consultant for Medicate
6 Pharmacy?

7 A. No. John has not worked as a consultant or an
8 employee for DeliverMed Holdings ever.

9 Q. Okay. Were you just friends?

10 A. Been friends for 27 years.

11 Q. Okay. Now, how is it that he came to be
12 associated with Medicate Pharmacy here or this DeliverMed
13 mail order business?

14 A. Initially when we had that bottleneck that we
15 talked about in late fall early winter of 2005 and we were
16 throwing as many hands we could on the problem. One of
17 the people we brought in to help with the faxes and
18 getting reports and everything was John Tollefson in 2005,
19 and he did that for a little bit into 2006.

20 In 2008 -- John hadn't, hadn't been around doing
21 anything with, with us and then in 2008, in March 10th
22 through the end of May, we went on a very, very aggressive
23 marketing campaign which was very successful. I mean, we
24 garnered about 865 new patients.

25 By garnering these patients, they were forwarded

1 down and Joe was working on the operations, registering
2 these patients. I didn't see Joe for part of June. And
3 in early July we both met up at a convention in Las Vegas
4 sponsored by one of our medical suppliers. Joe approached
5 me in the room and said, we have a major problem. And I
6 said, what's the problem? And he said, I lost so many
7 patients through the system that every, every patient we
8 basically got during this campaign is gone. And I was
9 very upset and I said, all right, you take an hour and you
10 tell me what the solution to this problem is. And I went
11 my way in the convention and he went this way.

12 And he came back and said, I need help, I need
13 somebody to help me. And he said, I need John Tollefson
14 to come in and help me because I'm going to Africa for a
15 week or ten days pretty soon. I said, well, you get on
16 the phone and call John, see what he's doing, see what
17 he's working on, see if he'll drop it and come here.

18 John was up there probably by August, I think.
19 And stayed there for over a, about a year.

20 Q. Was he an employee of the business or was he there
21 as a consultant?

22 A. He was a consultant.

23 Q. And was he paid on a W-2 or a 1099?

24 A. A 1099.

25 Q. And after John was there for a while did things

1 improve?

2 A. They improved dramatically initially and levelled
3 off and then we started doing marketing again. It was --
4 you know how I referred to shaking the revenue? He went
5 through line by line of every patient and, all the lost
6 ones, he tried to get as many back on. And I had him keep
7 track of the numbers and the amount of revenue, and I
8 don't recall the number but it was substantial, like
9 \$30,000 a month was rescued back. We still lost an
10 awful, awful lot.

11 Q. Do you have any knowledge about why this problem
12 came to be a problem, that problem that Joey brought to
13 you?

14 A. Somebody wasn't paying attention. And John had
15 written a series of e-mails as to what he saw the
16 solutions were, and that was given to Joe after he came
17 back from Africa. But they kept John for a long time.

18 Q. And so here we come to this e-mail in December of
19 '08 where the suggestion is being made, we need to release
20 him, we're paying him \$10,000 a month.

21 Do you have any sense of how much money John was
22 able to save for the company with his work?

23 A. Well, if you are saving -- let's just say low side
24 of 250, high side 300, you're saving about 3 million, two
25 and a half to \$3 million a year of revenue.

1 Q. Did you ever make any loans to Joey?

2 A. Yes.

3 Q. What loans were those?

4 A. Made two loans, one in early September 2006 for
5 \$3,000, and one in call it September 19 or 20, 2007, for
6 \$8,000.

7 Q. And what were those for, if you know?

8 A. The first loan, he told me he had some expenses he
9 had to take care of. The second one, he wrote back in the
10 e-mail and said that he needed it because he had to pay
11 his son's tuition at St. Louis School of Pharmacy, and he
12 was going to go ahead and write a check and I had to get
13 the money there so that that check he wrote would clear.
14 Because they were going to throw him out if he didn't pay
15 his bills.

16 Q. And did he pay you back for those?

17 A. Yeah, he paid me back. Yes.

18 Q. Okay. Good. All right. Let's turn to a
19 different topic here. We are now going to talk about
20 selling the business. And I want to first look at page 15
21 of Exhibit 6. Let's begin with the bottom e-mail. What
22 is that e-mail?

23 A. It's dated December 11, 2006, I think -- is it? I
24 can't read -- yes. Subject, distributions. Mike, comma
25 -- I'm sorry, it's from me to Mike.

1 And it says, Mike, comma, were any distributions
2 made last week for the November distribution?

3 Q. Now, is the e-mail at the top his response to you?

4 A. Yes.

5 Q. And what is his response?

6 A. It's dated December 14th, Thursday. It's from
7 Mike Schaltenbrand to myself.

8 Q. Okay.

9 A. It says, Mark --

10 Q. And what is he saying to you in this e-mail? How
11 is he responding to you?

12 A. He's basically responding that there -- he can
13 continue with the distributions later but right now they
14 are, they are out of cash.

15 Q. All right. And then he goes on to talk about
16 talking with Alisha about the distributions. What is he
17 saying there?

18 A. I have spoken with Alisha and she can continue to
19 do so, so well as we distribute 30,000, 24,000 and 6,000
20 to myself, you and Joe respectively.

21 Q. Okay. So throughout this process of making
22 distributions, who's controlling the distributions
23 themselves, what's distributed?

24 A. Mike Schaltenbrand.

25 Q. And he writes the checks?

1 A. He writes the checks. He signs the checks. He
2 makes the distributions. He makes the wire transfers.

3 Q. All right. Then it goes on to say, hope to hear
4 from you about possible offers and options. What's he
5 talking about there?

6 A. Selling the business or partnering the business or
7 distributing the business, merging the business, some type
8 of transaction.

9 Q. And here we are in December of '08 and what are
10 your efforts at this point in --

11 MR. STINE: Your Honor, it's '06.

12 A. '06.

13 MR. COX: I'm sorry. My apologies.

14 Q. (BY MR. COX) In '06, what are your efforts that
15 you are making, if any, to sell the business at this
16 point?

17 A. Well, at this point we are just now starting to
18 talk and look at options for mezzanine because he wants to
19 get out and it takes quite a long time to sell a business
20 of this type. Mezzanine financing.

21 Q. I did want to stop for just a moment and have you
22 explain exactly how mezzanine financing would equate to a
23 sale. Could you explain that to us?

24 A. Oftentimes when you hear about a management group
25 buying out the owners of the business, or when you hear

1 about what they call a leverage buyout where a group of
2 employees will buy out the business, it often involves a
3 practice called mezzanine financing.

4 And mezzanine financing is nicknamed after
5 baseball stadiums where you have the mezzanine is the
6 upper section of seats. And what that means is, a
7 mezzanine comes through and loans the money to the people
8 who want to buy out the business at a much higher interest
9 rate than is the going rate because they're taking a lot
10 of risk on, and they also have options to purchase shares
11 at a set price at some time in the future. And that's how
12 they get their reward for the risk they are taking.

13 The risk they are taking is that below them, the
14 first people that get paid are usually the vendors, the
15 banks and all their secured creditors. So that stack that
16 they're on top of makes it called a mezzanine financing.

17 Q. All right. Thank you. Did you ever tell Michael
18 or Joey that the partnership needed to borrow more money
19 in order to make the business more valuable to sell?

20 A. Let me repeat that back to you.

21 Q. Sure. Did you ever tell Mike or Joey that the
22 partnership needed to borrow more money so it would make
23 the business more valuable to sell?

24 A. I can't imagine how taking more loans out without
25 having that loans correspond to an increase in sale and

1 profi tabi l i t y c o u l d e v e r m a k e a b u s i n e s s m o r e v a l u a b l e .

2 I t w o u l d m a k e i t l e s s v a l u a b l e .

3 Q. S o d i d y o u t e l l t h e m t h a t ? D i d y o u t e l l t h e m t h a t
4 t h e y n e e d e d t o b o r r o w m o r e m o n e y t o m a k e i t m o r e v a l u a b l e ?

5 A. N o , n o t u n l e s s y o u w a n t e d t o b o r r o w i t t o g r o w ,
6 n o t b o r r o w j u s t t o m a k e i t v a l u a b l e . I t ' s a c o m p l e t e --
7 I ' m s o r r y t o s a y , i t ' s a r i d i c u l o u s s t a t e m e n t .

8 Q. W o u l d i t h a v e a n o p p o s i t e a f f e c t ? W o u l d i t m a k e
9 i t l e s s v a l u a b l e ?

10 A. D r a m a t i c a l l y o p p o s i t e e f f e c t , l e s s v a l u a b l e .

11 Q. S o g o i n g b a c k t o t h i s e - m a i l n o w , h e i s , h e i s
12 i n d i c a t i n g t h a t t h e b u s i n e s s i s b e h i n d i n p a y m e n t s ? I s
13 t h a t w h a t h e ' s t a l k i n g a b o u t ?

14 A. B e h i n d f r o m e x t e n d e d p a y m e n t s f r o m 28 t o 40 d a y s .

15 Q. A n d w h a t d o e s t h a t m e a n ?

16 A. W e l l , H D S m i t h , w h o i s l i s t e d a b o v e t h e r e i n t h e
17 f i r s t s e n t e n c e , w a s t h e , w a s t h e i r d r u g d i s t r i b u t o r p r i o r
18 t o M c K e s s o n a n d A m e r i S o u r c e B e r g e n . I t w a s a l o n g t i m e
19 r e l a t i o n s h i p o f M r . S c h a l t e n b r a n d ' s . A n d t h e y o f f e r e d h i m
20 28 - d a y t e r m s . I n o t h e r w o r d s , h e w o u l d p u r c h a s e
21 s o m e t h i n g , h e h a d 28 d a y s t o p a y i t .

22 B u t i t l o o k s , t h i s l o o k s l i k e h e e x t e n d e d t h e
23 p a y m e n t s f r o m 28 d a y s t o 40 d a y s , s o h e g o t b e t t e r c r e d i t
24 t e r m s f r o m t h e m . A n d i t s a y s , w e a r e b e h i n d f r o m t h e
25 e x t e n d e d . S o e v e n t h o u g h i t ' s b e e n e x t e n d e d , h e i s b e h i n d

1 in his payments.

2 Q. Do you know how much Mike had taken in
3 distributions around this time?

4 A. Not 'til much later when I saw the taxes.

5 Q. And what did you learn then?

6 A. If you got a financial statement, I can give you
7 the exact numbers what was taken out, but a huge amount of
8 money was taken out.

9 Q. And what, that was for his ex-wife and a
10 distribution for himself?

11 A. His regular third Friday of every month
12 distribution for his ex-wife and distributions for him.

13 Q. And how much did the other partners receive this
14 month? What we're looking at here.

15 A. This is December 14th. I think we didn't receive
16 ours until either the end of December or the beginning of
17 January. So several weeks later we received a
18 distribution.

19 Q. Let's move forward now from December '06 to July
20 of 2007.

21 THE COURT: Still Exhibit 6?

22 MR. COX: Yes, sir.

23 Q. (BY MR. COX) Page 21.

24 A. Is it possible to focus that a little more? It's
25 hard to read this copy.

1 Q. Well, this is a tough one to read, that's for
2 sure.

3 A. Okay.

4 THE COURT: I'm having a hard time reading what I
5 have.

6 Q. (BY MR. COX) Is that better?

7 A. For my eyes, anyway.

8 Q. This is an e-mail from Mike -- from you to Mike
9 and Joey. What's the date?

10 A. July 13, 2007.

11 Q. And at this time, Mark, are you still trying to
12 sell the business?

13 A. This is getting to the point where I have a lot of
14 interest from the mezzanine folks.

15 Q. Okay.

16 THE COURT: Can I interrupt? Why do I keep asking
17 myself that question.

18 I need to clarify something on this. Everyone, I
19 mean, today, even Mr. Siddie, every one has said -- is the
20 business you're talking about just the mail order business
21 or does that include the Medicate, too? The Medicate
22 Pharmacy? Is -- what is actually are you trying to find a
23 buyer for?

24 Q. (BY MR. COX) At this, at this time in July of
25 2007 what are you out there trying to sell, the mail order

1 part or Central also with it?

2 A. All of Central.

3 Q. And is that because Mike wants to sell all of
4 Central?

5 A. Mike wants to sell all of Central. Plus, nobody's
6 going to buy these patients without all the records, all
7 the facility, all the provider numbers, applications,
8 everything. They want to buy the whole thing, do what
9 they want with it. But they want the whole business of,
10 of Medicate Pharmacy.

11 THE COURT: Okay. Did that include East St.
12 Louis? The St. Mary's operation, too?

13 THE WITNESS: At this point, no.

14 Q. (BY MR. COX) Now then, did Michael tell you why
15 he wanted to sell the business?

16 A. Well, he had a few reasons. One, he wanted to
17 take money off the table; he thought it grew to a
18 substantial amount and he wanted to take some money off
19 the table. And one of the other reasons, he said it was a
20 desire of his to eventually have another retail pharmacy
21 in the O'Fallon area and he wouldn't mind selling this one
22 off and reaping the profits.

23 Q. All right. So at this point is he wanting to sell
24 all of his interest in Central including the mail order?

25 A. At this date?

1 Q. Yes.

2 A. Well, again, if you -- can I read the e-mail?
3 Because that kind of explains it.

4 Q. Okay, explain this to us.

5 A. It says, I am -- I am writing to Mike
6 Schaltenbrand and Joey Siddle on July 13, 2007. The
7 subject is, singing the same song.

8 And for several weeks I was -- this is not
9 reading, I'm discussing. For several weeks I was trying
10 to get information so I refer to it as singing the same
11 song.

12 I'm still looking for the info on sale. Everybody
13 has to give me their ideas a couple of weeks ago.
14 Everybody should be completely aware that late February we
15 were cash proving out over four week moving average of
16 813,000. Today we hit a low of \$581,000. The new system
17 has lost patients of 232,000 or a reduction of 29 percent.
18 Devastating. Was the reason we went to the new system was
19 to prevent patient loss. I have a buyer but we need to
20 get tightened up on the loss of patients. The profit
21 multiple is dropping from 5.5 maybe 3.5-3.7 times earning
22 due to the loss of patients. Sales dollars holdback will
23 definitely occur due to patient loss.

24 Were the distributions made. I did not receive
25 the wire. Let me know. Nobody returns my e-mails.

1 Q. Well, let's talk just a moment about what is
2 happening here with this new system. Why is this loss
3 occurring? Were you able to figure that out?

4 A. Yeah, John worked on figuring it out in that --
5 I'm sorry, not John. Joey figured out some of the
6 problems that were causing the, with the new patient
7 system and how we had it set up and he was learning how
8 that worked better later on.

9 Q. And were you able to fix this? Was it able to be
10 repaired?

11 A. It was able to be repaired after a lot of loss,
12 yes.

13 Q. And why are you concerned about the loss? I mean,
14 of course we're all concerned about losing money but in
15 terms of the sale why were you concerned about this loss
16 occurring?

17 A. When you are selling a business and you have
18 financials and a book put together of financials for a
19 period of time, and then when you are in negotiations or
20 trying to structure the deal and you bring up a new set of
21 financials which shows a decline in income, it is not a
22 good thing. People walk from the deal. People mistrust
23 you.

24 Q. So at this point Mike's wanting you to sell the
25 Central business. You are looking at the sales and seeing

1 them go down and you are concerned about how that's going
2 to affect the sale. Is that a good summary of it?

3 A. Yes. It's a, basically it's hemorrhaging and
4 nobody wants to buy a hemorrhaging business.

5 Q. All right. And then at the end you make a request
6 for distribution. What's that about?

7 A. We're trying to find out where the distributions
8 are for the month that were supposed to come. I must have
9 been told that I was going to receive some type of wire
10 and I didn't receive it and I said nobody's returning my
11 e-mails. I was trying to get a hold of people to answer
12 these various questions.

13 Q. All right. Now then, in terms of the sale, what
14 were you having to put together in terms of information
15 that you would need to give to a potential buyer?

16 A. It can vary in their request from four, five, six
17 years of statements, financial statements, meaning four,
18 five, six years of the P and L -- profit and loss
19 statements. It can also include a list of your major
20 accounts, a list of your assets. It can involve a list of
21 your, let's call them potential clients you are working
22 on. You need a balance sheet. You need all of your
23 financial information, loans, purchasing arrangements.
24 You need to have any type of contract that you have. You
25 need to show your patient volume and patient revenue for a

1 trending period so that it looks like it's continuing to
2 grow on a, some angle better than flat, at a 45, 15, 20
3 percent growth, no declines.

4 You have to put all this information together to
5 disclose where you are, where you have been, how you got
6 there and where -- so they can make their decision as to
7 where they want to go.

8 Q. Okay. Now, you were the person assembling this
9 information to share with potential buyers?

10 A. Correct.

11 Q. And did you gather financial statements or were
12 you given financial statements from Schaltenbrand and
13 Schaltenbrand?

14 A. I received all my financial statements from
15 Schaltenbrand and Schaltenbrand, yes.

16 Q. And did you rely on those financial statements
17 that they gave you in dealing with these potential
18 purchasers?

19 A. Yes.

20 Q. And you told --

21 MR. STINE: Your Honor, I'll object to that. I
22 don't know how he's relying on them in dealing with
23 purchasers. I may be able to understand why the potential
24 purchasers would rely on them, but it sounds to me like
25 he's just a conduit passing information.

1 MR. COX: Your Honor, if I may --

2 THE COURT: Objection's overruled. You can
3 cross-examine on it. Go ahead.

4 MR. STINE: Okay.

5 Q. (BY MR. COX) Were you relaying information to
6 potential purchasers about the financial situation that
7 was going on with the business? Were you giving them
8 information?

9 A. Yes.

10 Q. And were you relying on these financial
11 information from Schaltenbrand and Schaltenbrand in your
12 communications with these potential purchasers?

13 A. Yes.

14 Q. In terms of the guaranty that you signed, where
15 you guaranteed the debt, did you rely on the financial
16 statements of the business in determining whether you
17 would execute that guaranty or not?

18 A. Oh, yes.

19 Q. And did you rely on them to be accurate?

20 A. Yes.

21 Q. Did anyone ever tell you during the process where
22 you were relying on these financial statements that those
23 were, that they were in any way inaccurate?

24 A. No.

25 Q. Now let's turn to page 25 of Exhibit 6. Here we

1 are in the summer of 2007 now, the business has been
2 operating about two years, and what has Michael's
3 involvement been in the mail order business during that
4 two years?

5 A. Michael wasn't very involved. He had
6 relationships he had built with HD Smith and McKesson to
7 purchase drugs. He had the pharmacy. He knew some people
8 for pharmacists if we had a fill-in pharmacist or
9 whatever, but his involvement was not that great. He was
10 primarily there pretty much on Fridays only, for a few
11 hours on Fridays.

12 Q. So basically it's you and Joey working together at
13 the pharmacy to make this work?

14 A. Yes. Joey was there 7:30, 8:00 in the morning,
15 until about 9:00 or 10:00, and then he left for a few
16 hours. And then he would come back around 2:00 or 3:00
17 and he'd stay 'til 5:00, 4:30, 5:00 every night, five days
18 a week. I mean, he would actually go in there sometimes
19 on Saturdays and paint and do maintenance and things like
20 that, too.

21 Q. And let's take a look now at page 25. This, at
22 this time in the summer of 2007, is this when the business
23 is having problems losing patients?

24 A. It's losing patients and we're trying to sell it
25 at the same time.

1 Q. The date of this is what?

2 A. This is -- I can't tell if it's July 18th or July
3 19, 2007.

4 Q. And this is --

5 A. I'm sorry, it's July 19.

6 Q. Okay, very good. And then Joey is sending you an
7 e-mail, and also to Michael; is that right?

8 A. Correct.

9 Q. And what's Joey talking about in this e-mail?

10 A. He's trying to defend the position as to why the
11 patients are being lost or to explain the position as to
12 why the patients are being lost.

13 Q. Okay. And so he's providing you with some
14 numbers?

15 A. Yes.

16 Q. And then what's he, what's his sort of, what's the
17 purpose of this exactly?

18 A. Well he's trying to say that the patients, the
19 reason we're losing patients is the patients are leaving
20 and it has nothing to do with the software.

21 Q. Does he indicate how many patients you are losing
22 at this point?

23 A. We're losing about 10 percent of our patients a
24 year. We will need 25 new patients each month to offset
25 that. We refers previously to 154 cancel patients for a

1 period of time of January of '07 to July 18th.

2 Q. At this time whose job was it, whose job was it to
3 enter the patients into the system?

4 A. By the system, you mean -- which system?

5 Q. Into the software system so they would be
6 serviced?

7 A. You're talking about the pharmacy computer system?

8 Q. Yes.

9 A. That would be the group of women -- that would be
10 that group of women that Joe Siddle managed.

11 Q. So, was it his responsibility to see that the
12 patients were being entered into the system?

13 A. Yes.

14 Q. Was it his responsibility to see that the patients
15 were being serviced in terms of getting the prescriptions
16 that they had ordered?

17 A. Yes.

18 Q. And did you determine, did you determine what was
19 happening in terms of this loss of revenue? We see it's
20 not the software. What was the problem?

21 A. Well, he said that they were leaving because they
22 wanted to leave. And so I took a list of the patients
23 that we had transferred, meaning DeliverMed had
24 transferred down, and I gave those back to the call center
25 and said, call these patients that we're no longer

1 servicing, find out why they left.

2 Q. And what was the result of that investigation?

3 A. I would say the overwhelming majority in the 80,
4 90 percent of the patients, said that nobody ever gave
5 them --

6 MR. STINE: Your Honor, I'm going to object. I
7 don't know what his basis of making this statement is. If
8 he has some report to reference that -- yeah, seriously --

9 MR. COX: Your Honor, this isn't being offered for
10 the truth --

11 THE COURT: It's not offered for the truth of the
12 matter asserted, it's background.

13 Q. (BY MR. COX) So what were you discovering in your
14 investigation was really happening?

15 A. Customers left because once they were signed up
16 nobody ever responded to them with any drugs, any
17 prescription request, anything. They were completely
18 forgot about.

19 Q. So what steps, if any, did you take to correct
20 this problem?

21 A. We printed off a list of all the DeliverMed
22 patients as such, gave them back to the call center and
23 said, try and resign these people up. We had their
24 information but just try to get them to commit to come
25 forward.

1 Q. And was that successful?

2 A. A small percentage. But people were pretty upset
3 and bitter at that time that they didn't want to sign back
4 up.

5 Q. Now at this time in the summer of 2007 were there
6 any problems receiving distributions?

7 A. Yes.

8 Q. And what were those problems?

9 A. There's never any money. We've got too many bills
10 to pay. Records don't indicate it, meaning their records
11 at the bank say we don't have enough money. Things like
12 that.

13 Q. Now, you had told us earlier that there was a
14 change in the partnership there in August of 2007. You
15 took Ann's place as the partner with the agreement of Mike
16 and Joey. But we have been looking at e-mails here up to
17 this point where there's a lot of communication between
18 you and Mike and Joey about numbers and what's going on in
19 the business and you have described your involvement.
20 What was your relationship to this business during that
21 period of time when Ann was a partner? What were you
22 functioning as?

23 A. I was helping out on two or three of my wife's
24 relationships, what she had with different pharmacies.

25 Q. And were Mark -- I'm sorry. Were Mike and Joey

1 treating you as a partner in providing information and
2 sharing information with you?

3 A. I was not getting much information but, when I'd
4 get it, they were forwarding information to me.

5 Q. All right. Now let's take a look at Exhibit 31,
6 please.

7 (Off the record.)

8 Q. (BY MR. COX) Let's take a look at Exhibit 31. We
9 have talked about this with previous witness. Can you,
10 Mark, just walk us through this, what is this document to
11 begin with, where did it come from, what is its purpose,
12 and so on.

13 MR. SCHUVER: Can you put it on the screen,
14 Courtney?

15 MR. COX: Sure.

16 Q. (BY MR. COX) This is just the first page. Let's
17 talk about this, Mark. Give us the background on this
18 document.

19 A. A few weeks prior to this --

20 Q. What's this?

21 A. I'm sorry. November 15, 2007. Michael wrote an a
22 e-mail and said that he was going to increase lines of
23 credit but he would do it only if we all agreed to
24 guarantee the partners to be liable to the bank on those
25 loans at the Bank of O'Fallon.

1 Q. In other words, up to this point you and Joey had
2 not been liable on the debts of the business?

3 A. No, just the -- Mike was the guarantor, and I
4 believe it was secondary guarantor behind the corporate
5 assets of the business, our receivables.

6 Q. And so he's asking you and Joey to now also
7 guarantee the debt?

8 A. Correct.

9 Q. And were you willing to do that?

10 A. Yes.

11 Q. And did Joey indicate whether he was willing to do
12 that to you?

13 A. Yeah. Joey and I had a private discussion. He
14 said, if you're going to do it, I'll do it.

15 Q. And do you know who actually prepared this
16 document?

17 A. I was told Mike's lawyer. I don't know who that
18 is.

19 Q. Who told you that?

20 A. Mike.

21 Q. Who is his -- you don't know the name of the
22 lawyer?

23 A. Occasionally threw a name Tom Cannady out. He had
24 other lawyers, too. I don't know which one it was.

25 Q. And how did you come to receive the document?

1 A. I believe I received it by e-mail.

2 Q. And so, and we had looked at that e-mail earlier
3 with, with Mike, but this is -- is this the actual
4 document that was signed?

5 A. This -- you mean the one on the screen here?

6 Q. Yes. Look at your exhibit. You can see all the
7 pages.

8 A. Right. I mean, there were some changes that we
9 had to make and there were more structural changes because
10 they had the wrong name of the company down and had it as
11 an LLC and we made some changes that way, plus it had a
12 blank line for the loan numbers. And we had to get the
13 loan numbers. We filled that in.

14 Q. So is this the document, the actual document you
15 signed?

16 A. Yes.

17 Q. Let's go to the first page then. Does this set
18 out accurately at this time the partnership interest of
19 each of the three of you partners?

20 A. Yes.

21 Q. And below that we see some numbers that have been
22 filled in. Do you know what those are?

23 A. Are you talking about the, like the 501573?

24 Q. Yes.

25 A. Those are the loan numbers that we are

1 guaranteeing.

2 Q. And I see some initials that appear to the right
3 of those numbers. What are those?

4 A. Those are my initials, meaning I made the change
5 on the document.

6 Q. So you filled in the number?

7 A. Right.

8 Q. Where did you get those numbers?

9 A. I called Kip Atkins up. And he told me, he sent
10 me an e-mail telling me these are the two loans and the
11 balances as of the date you are going to guarantee.

12 Q. Who's Kip Atkins?

13 A. I think his actual name is Kevin Atkins. And he's
14 a vice president of Bank of O'Fallon in O'Fallon,
15 Illinois.

16 Q. Looking at the top, can you tell me -- well, let's
17 see here. What's the name of the entity that's described
18 in the first paragraph?

19 A. It's listed as Medicate Pharmacy LLC. And that
20 number goes down -- or, and then you go to the next line,
21 that's why he crossed it off, because it's a corporation,
22 not an LLC.

23 Q. Okay. So you corrected that --

24 A. Correct.

25 Q. -- on the form so it would reflect that?

1 A. Yes.

2 Q. Okay. And why is that listed rather than this
3 partnership?

4 A. Because the lender -- I'm sorry. The borrower of
5 these loans is Medicate Pharmacy LLC.

6 Q. Now looking at the description of the ownership of
7 that entity that's described here on this document
8 prepared by Mike's attorney, are, are you and Mike and
9 Joey shown as owners of that?

10 MR. STINE: Your Honor, I'm going to object on the
11 basis he refers to this is prepared by Mike's attorney.
12 He said he didn't know who prepared it --

13 THE COURT: Sustained. Refer to the document.

14 MR. COX: All right. Your Honor, he had testified
15 that an attorney was, made it, according to Mike. He
16 didn't know the name.

17 THE COURT: Just --

18 MR. COX: All right.

19 THE COURT: Hold on a second. He didn't answer
20 the question.

21 MR. COX: Okay. Thank you, Judge.

22 Q. (BY MR. COX) In terms of the ownership, what is
23 shown here of the ownership of this entity known as
24 Medicate Pharmacy?

25 A. Correct, that is the ownership of the borrowers in

1 the following amounts, Michael Schaltenbrand, 50 percent;
2 Mark Swift, 40; Joey Siddle, 10.

3 Q. All right.

4 THE COURT: Now, hold it a second. The borrower
5 according to this document is a corporation. It says the
6 borrower. And the next, whereas the ownership of the
7 borrower -- were you an owner of -- 40 percent owner of
8 Medicate Pharmacy the corporation?

9 THE WITNESS: No.

10 THE COURT: So that's not correct here then?

11 THE WITNESS: No, we were the 40 and 50 percent
12 owner at this time of the mail order business.

13 THE COURT: Of the partnership.

14 THE WITNESS: Correct.

15 MR. COX: I think I may be able to clear this up a
16 little bit for the Court with my next question.

17 THE COURT: Okay.

18 Q. (BY MR. COX) At this time, and here we are in
19 late 2007 going into 2008, we have had discussion about
20 the change in partnership. What discussions are going on
21 with you and Mike and, and Joey at this time about the
22 change from having a partnership in the mail order
23 business to owning part of the Medicate Pharmacy Central?

24 A. Mike had made the decision in the fall of 2007
25 that he no longer wanted to sell the business. He stated

1 in his e-mail, I'd be a fool to sell my business. I want
2 to talk to you about other arrangements.

3 That's when he said, I'd like my partners to be
4 owners of the overall pharmacy. I was very agreeable to
5 that, and that is how we then converted our ownership in
6 the mail order to an ownership percentage in the overall
7 pharmacy.

8 Q. So you went from being partners in the mail order
9 to being owners of the entire Medicate Central, the retail
10 and the mail order; is that correct?

11 A. Yes. And -- well, it was all components of
12 Central because mail order, he factored in Cambridge, long
13 term care facilities as well as the hospices. It was
14 everything that happened in the brick building.

15 Q. If you would, we've had a little testimony about
16 that. Let's just pause for a moment and have you explain
17 what those different parts are. Let's start with
18 Cambridge. What's that?

19 A. Well, Cambridge is, it's my understanding, I've
20 never been to the facility but I understand it is a long
21 term care facility meaning it's like a nursing home or it
22 is a nursing home, slash, you know, assisted living
23 center. Because that's my understanding of it. And then
24 there's Hope Hospice was another one which is
25 self-explanatory, it's a hospice, home -- a hospice care

1 facility.

2 Q. Any other parts of the business there that, in
3 addition to the mail order and the over the counter?

4 A. Nothing of significance. Mike did some
5 calculations, it was like 79, 80 percent was mail order, a
6 small percentage was retail, and the Hope Hospice in
7 Cambridge comprised the remaining 20 percent.

8 Q. So, you indicated you were agreeable to this
9 change that Mike suggested. Was Joey also agreeable?

10 A. Yes.

11 Q. And so does this document that's here executed in
12 November 15th reflect what it is you and Joey agreed to
13 that Mike suggested? Is this reflecting that same thing?

14 MR. STINE: Your Honor, I would object. The
15 document speaks for itself. In fact, I think he's already
16 testified it doesn't reflect what his, what the agreement
17 was.

18 THE COURT: It's subject to cross-examination. He
19 may answer.

20 A. This reflects the 40 percent, 50 per -- 40, 50, 10
21 of the relationship as a revolving then, and guaranteeing
22 those loans as revolving then to ownership of the overall
23 business effective January 1, 2008.

24 Q. (BY MR. COX) Okay. So the plan was to move
25 toward that, and this reflects that change that was

1 comi ng.

2 A. Correct. Well, it reflects where we are now and
3 our willingness to guarantee the debt to go to the next.

4 Q. Okay. So in order to get into the business to be
5 an owner of all of that you have described he wanted you
6 to guarantee the debt, and you did that.

7 A. It was part of the whole deal, yes.

8 Q. Okay. And did you sign it?

9 A. Yes.

10 Q. And did Joey Siddle sign it?

11 A. Joey signed it. I had -- I signed and notarized
12 it. And Joey signed his. I don't think he notarized it,
13 though.

14 Q. And then after that, what happened to it?

15 A. This?

16 Q. Yes.

17 A. I know a copy went to Bank of O'Fallon because I
18 sent it there from -- we were in the pharmacy that day and
19 I faxed it over to Kip.

20 Q. The one with both signatures on it?

21 A. All three pages or four pages, whatever it is
22 here.

23 Q. This is the entire document that you faxed over to
24 Kip?

25 A. Yep.

1 Q. Okay.

2 A. Faxed it over to Kip at the Bank of O'Fallon.

3 Q. Mark, do you know how long that guaranty lasted?
4 How long a guarantor of those debts?

5 A. I -- I don't know when the loans -- Michael then
6 took those two loans somewhere in 2008, 2009, and
7 consolidated them into one loan which broke that guarantee
8 because we guaranteed the two separate, so I don't know
9 how long that was, but it was quite some time.

10 Q. All right. Now, going to page 77 back in Exhibit
11 6. And I'm going to apologize in advance for this one.

12 MR. STINE: What number is that, Courtney?

13 MR. COX: Page 76 of Exhibit 6. (Pause.) I'm
14 sorry, I pulled the wrong page.

15 (Pause.)

16 THE COURT: What exhibit?

17 MR. COX: Page 76 of Exhibit 6.

18 Q. (BY MR. COX) Now, at the top, Mark, is this an
19 e-mail from you to Mike?

20 A. At the very top one, November 25, 2007, yes.

21 Q. Just below that is another e-mail, and we have
22 examined that and the e-mail at the bottom extensively
23 with Mike about this, how much he wants and all this, so
24 on.

25 What I wanted to ask you about was the e-mail at

1 the top. And would you read that for us? It's so -- can
2 you read it okay?

3 A. I think I can.

4 Q. Okay.

5 A. Well, it's Monday November 26, 2007. It says --
6 it's from myself to Mike.

7 It says, the agreement we have developed is
8 completely enforceable by the bank. So until we
9 restructure the FIN -- federal identification number --
10 and the issuance of the shares you will have complete,
11 have complete -- and that's in capital letters -- and the
12 bank will have complete -- in capital letters --
13 enforceability in collecting the debt. In actuality, we,
14 we are -- there's -- I'm having a little trouble reading
15 that now. We are -- Joe and I -- are turning our rights
16 over to you in the shares of the A/R -- accounts
17 receivable -- to the bank. I will see you Monday evening.
18 I worked with Kip on this and the you can rest assure it's
19 completely enforceable. See you Monday evening and
20 Tuesday.

21 Q. So, here you are talking -- are you talking about
22 the guaranty at this point, this enforce -- something
23 that's enforceable?

24 A. Yes.

25 Q. In other words, are you assuring Mike here that,

1 that the bank can enforce its debt obligation against all
2 of the account receivable?

3 A. Against the account receivable and then on to the
4 guarantors.

5 Q. Right. And so why are you sending this message to
6 him? Why are you telling him this?

7 A. Because in Mike's e-mail, which was I guess on
8 Friday the 23rd, I guess is the way it looks, it says, I
9 don't know, it's like the third line from the bottom, it
10 says, they see it -- okay, I'm sorry, I have to back up
11 one sentence.

12 Also the role change my position with the bank.
13 They see it as I am still the responsible party for the
14 2-3 million dollars. I then have a side agreement
15 unenforceable by the bank with you and Joe. If you are
16 going to use the Bank of O'Fallon and guarantee the three
17 of us we will have to put it on the note.

18 Q. Mark, would you have signed this guaranty,
19 personally guaranteeing your assets for the debt of this,
20 if you were not going to receive a share of that Medicate
21 Central Pharmacy business?

22 A. No. No, I would not.

23 Q. So the agreement you talk about here is, the
24 agreement we have developed, and that agreement is that
25 you will get and Joey will get and Mike will get a share

1 of the complete pharmacy, that business, in exchange for
2 you guaranteeing these debts and becoming responsible on
3 them; is that correct?

4 A. Correct.

5 Q. Okay. Let's go to the next page, December 3rd,
6 2007, page 77.

7 MR. COX: Finally, one I can read.

8 Q. (BY MR. COX) This is from you to Mike?

9 A. Yes.

10 Q. And we're seeing here, followup for the wire
11 transfer for the loan of 107,643.

12 Let's stop there and would you explain to the
13 Court what that's about?

14 A. Yes. Because we were running all the time short
15 to cash, that we wanted to continue to go ahead with the
16 marketing in various areas. So I advanced \$107,643 to
17 continue the marketing.

18 Q. In other words, you are loaning the business that
19 amount of money?

20 A. No, I'm loaning DeliverMed to keep doing its
21 activities in marketing.

22 Q. I see.

23 A. On behalf of the partners.

24 Q. So you are loaning expenses for the marketing?

25 A. Correct.

1 Q. And with the expectation that who would pay you
2 back?

3 A. Our business would pay me back.

4 Q. The mail order business?

5 A. Medicate Pharmacy Central, yes.

6 Q. Then you go on to say, I'm feeling the heat from
7 the IRS for taxes on all the undistributed profits.
8 Please take care of. At this point are you owed
9 undistributed income?

10 A. Yes.

11 Q. And what's going on with you tax-wise? What are
12 you talking about here? Explain it.

13 A. Well, I cannot get information from 2006, 2007, as
14 to what our earnings are on the partnership of the mail
15 order. I need some information on -- I need to file
16 taxes. I haven't filed taxes for a long time, they're in
17 draft taxes. And I'm getting very concerned because I
18 contacted the IRS, I have these undistributed profits, I
19 go through and I write them a letter explaining everything
20 that's going on and say, if I file anything with you, it's
21 got to be draft until then. And they are responding
22 letters back constantly saying, you must file your taxes.

23 Q. And this undistributed income, are you on an
24 accrual basis at this point?

25 A. I'm on a cash basis, but I don't know how they're

1 reporting my situation to the IRS so I am getting
2 concerned.

3 Q. And why are you unable to actually make the
4 filing?

5 A. Well, I don't have any tax information from 2006
6 yet as to how Schaltenbrand and Schaltenbrand is reporting
7 the activities of the mail order pharmacy. Is it going to
8 be down on a K-1? Did they show the gross amount? Did
9 they show the net amount received? I don't know.

10 Q. Are you requesting the information?

11 A. I requested it several times from Senior, yes.

12 Q. Larry Schaltenbrand Senior?

13 A. Correct.

14 Q. And did you ever receive a response?

15 A. I received a response, yes.

16 Q. What was the response?

17 A. That's confidential. You can't get that.

18 Q. You can't get the information of the, of the
19 business that you're a partner in?

20 A. Right.

21 THE COURT: I have a question on this same line.
22 You said, please take care of -- and you are talking about
23 undistributed profits. How much do you believe was owed
24 to you as undistributed profits as of the end of I guess
25 tax year 2006?

1 THE WITNESS: At the end of 2006?

2 THE COURT: I mean from -- do you have financial
3 reports or documents that showed how much you were owed?

4 THE WITNESS: At this point, no. A few months
5 after this, I did.

6 THE COURT: Okay.

7 Q. (BY MR. COX) And in that few months later when
8 you did get some information, as you sit here today do you
9 know whether that was underreported to you or was
10 accurate?

11 A. Well, I think it's been significantly
12 underreported.

13 Q. And why do you think it's been underreported to
14 you at that time?

15 A. Because during these proceeding we got a lot more
16 information as to the profitability of the business, and
17 we got a lot more information about distributions other
18 people were taking and personal expenses and all things
19 that would drive the -- and then there's been several
20 amended tax returns of the business and Michael filed
21 which showed in some instances greater profitability. So
22 it's a lot less -- I mean, it's a lot more than I'm
23 stating.

24 Q. So at this point you are trying to, you are trying
25 to get information so you can take care of this issue?

1 A. Take care of the IRS issue, yes.

2 Q. Did Mr. Schaltenbrand Senior indicate to you why
3 he thought information about the business you're a part of
4 would be confidential from you?

5 A. Yes.

6 Q. What did he say?

7 A. That also is confidential.

8 Q. Okay. Let's now turn to page 84. This is
9 actually the next day. This is your e-mail to Michael on
10 December the 4th. Tell us what you are talking about
11 here.

12 A. The loan amount which was on the books that they
13 owed me was 107,000. I'm asking him for needing his help
14 in following through in getting the loan repaid, whether
15 it's by wire, whether it's by check.

16 Q. And then what do you say about the IRS?

17 A. Well, I need to square up with the IRS on the
18 first of -- the letter I believe said January 2nd or 3rd,
19 I had to have everything in. So I said on the 1st that
20 I'm getting quite concerned, the IRS is due from -- is the
21 undistributed earnings.

22 THE COURT: Here's where I'm having a problem. If
23 the IRS knew that you had undistributed earnings, how come
24 you didn't know you had undistributed earnings? I mean,
25 the exact amount?

1 THE WITNESS: No, I -- they knew I had -- they
2 knew I had undistributed. I knew I had undistributed.
3 They didn't know the amount. They had a requested filing
4 of a taxes. I can't file a final taxes until I get a K-1
5 or some information about how the business did. Anything
6 I had filed short of that would be a false.

7 THE COURT: So you weren't -- you were filing for
8 extensions or not filing?

9 THE WITNESS: Extensions, extensions, then finally
10 they're saying, send us some information. I'm saying I've
11 got some, but they don't have the calculations --

12 THE COURT: Okay. So you weren't filing tax
13 return extensions because you say you didn't have all the
14 records.

15 THE WITNESS: Just to make sure I understood, you
16 said I'm not filing tax returns and extensions?

17 THE COURT: No, you're not filing, you're not
18 filing -- you're filing extensions on the tax returns.

19 THE WITNESS: Correct.

20 THE COURT: Because you're telling the IRS you
21 don't have all the information.

22 THE WITNESS: I do not have the proper information
23 to file accurate income taxes --

24 THE COURT: I understand now.

25 Q. (BY MR. COX) Did you file some, at least one

1 year, an informational return, not a final return
2 just to --

3 A. Several months ago I was contacted by the IRS. I
4 took all the information I had of undistributed earnings.
5 I took all the draft I could of taxes. I took a great
6 deal of lengthy letters, and I sent corporate books and
7 everything, I made a gigantic box up and sent it to them
8 and said, here is where I'm at.

9 Q. That still hasn't been resolved?

10 A. I have not filed a final tax return on anything
11 since 2006, I believe, or '05. I can't recall, but it's
12 been a lot of years.

13 Q. Going ahead here, you say, we are all set at the
14 bank. What are you talking about there?

15 A. Well, I just called Kip again. I said, Kip,
16 you've got the guaranty from the bank, and we all signed
17 and just to make sure everybody had signed with the bank,
18 that they got their information they needed.

19 Q. And so you are moving toward this change that
20 occurred on January 1st, 2008, where you will own, and
21 Joey and Mike will own, all of Medicate Central?

22 A. Joey, myself and Mike, yes.

23 Q. Right. And was there a discussion among the three
24 of you to change at some point the actual formal structure
25 of Medicate Pharmacy Central, that is, break it away from

1 Medicate Pharmacy Inc.?

2 A. That was our plan, yes. We had several -- we had
3 a couple meetings actually with the State -- I had a
4 couple meetings and we had one conference call with the
5 State Medicaid folks about breaking the provider number up
6 between East St. Louis and also Washington Park so there
7 would be two provider numbers, and then getting a federal
8 tax ID number for each facility.

9 Q. Did that ever actually happen?

10 A. No.

11 Q. Why didn't it happen?

12 A. There was just constant delays, constant, couldn't
13 get information, not follow through.

14 Q. Who was supposed to be handling the documentation,
15 the paperwork, that would have formally changed Medicate
16 Pharmacy Central into something else that all three of you
17 would own as shareholders?

18 A. Initially, it was going to be Tom Cannady. Then
19 it was, like I said, he had another lawyer working on it.
20 And finally I got very frustrated and I said I'm going to
21 have a lawyer start working on it. We did drafts of
22 operating agreements, corporate organization agreements,
23 and they were sent out, or I got return e-mails saying,
24 we're reviewing it, we'll get back to you, so there was
25 delay, delay.

1 Q. Well, who was getting these attorneys, Cannady and
2 perhaps somebody else to -- that's C-A-N-A-D-Y [sic], by
3 the way -- to prepare these documents and when was that
4 being done?

5 A. It happened right after the first of 2008. I was
6 given the name of Tom Cannady by Mike to call. I called
7 him many times, left messages, and one time the
8 receptionist was kind enough to say that, he can't talk to
9 you about things that Mike's doing, and, he represents
10 Mike.

11 So then Mike -- I told Mike. He said he'd take
12 care of it. And then there was supposed to be another
13 attorney that did it.

14 Q. And over what period of time is, are you waiting
15 for Mike to get his attorneys to create these documents
16 that are needed to carry out the agreement you have
17 reached?

18 A. A year, 13 months, something like that, and
19 finally I said I'm taking control of this and getting this
20 done. Everything was in process, everything was being
21 filed, and nothing was being filed and nothing was being
22 processed.

23 Q. So for 12 to 13 months you are waiting -- or not
24 waiting but trying to get Mike's people to do this?

25 A. I would characterize it as chasing people to do

1 i t.

2 Q. And they never did i t?

3 A. No.

4 Q. And when -- did you talk with Mike and express to
5 him this problem, that you want to get this paperwork
6 completed?

7 A. Yeah, and Joey was very concerned. He even gave
8 me Social Security numbers of him and his wife and said he
9 wanted to break up his shares between him and his wife.
10 And he said -- we were all getting concerned but, you
11 know, we kept on going forward and kept on going under,
12 this was being taken care of and everybody was very busy
13 growing the business and it was just delays, delays,
14 delays.

15 Q. So from January 1st forward, and we're going
16 through these 12 or 13 minutes [sic], are you operating
17 on --

18 THE COURT: Are we now in 2009 then?

19 MR. COX: Well, he's indicated that he was trying
20 to get them -- yeah, from January 1st, 2008, he was trying
21 to get them to finish the paperwork.

22 Q. (BY MR. COX) And I was asking during that 12 to 13
23 months after January 1, 2008, were you working with the
24 understanding that there was an agreement that there would
25 be a corporation of Medicate Pharmacy Central that you

1 would own a percentage of?

2 A. I was working under that assumption. I was
3 working under that representation. We were all working
4 under that representation that we are all owners of
5 Medicate Pharmacy Central. Myself, Mike and Joe.

6 Q. So you say you finally gave up and tried to get
7 your own attorney involved to take care of it; is that
8 right?

9 A. Yes.

10 Q. Who was that?

11 A. Chris Kennedy.

12 Q. And his name is spelled like the president, not
13 the other, like the Cannady. This is K-E-N-N-E-D-Y. Is
14 that correct?

15 A. Correct.

16 Q. And when, about when was that, would you say?

17 A. Oh, we met in early February 2009 and I explained
18 where we were and laid out all the information that we
19 had.

20 Q. So during the past year you have been waiting on
21 Mike to get it done, so now you, here we are in February
22 2009, you are talking steps to get that done. What
23 happens? Do you get that done?

24 A. No. What happened is we started to get into the
25 process and started putting together documents, and we

1 sent off the operating agreement, I believe it was a
2 shareholder's agreement. And I can't remember all the
3 agreements that Chris produced. And we forwarded them to
4 Mike, and Mike's responded e-mail is, I'm going to forward
5 these to my dad and brother and Tom Cannady and we're all
6 going to review them and give suggestions. And we were
7 waiting on things, and didn't respond until probably
8 spring of 2009.

9 Q. And then what happened? What was the response?

10 A. In May 2009 time frame, they said that they were
11 going to forward the documents to us and --

12 Q. Who's "they"?

13 A. Mike said he would forward the documents after he
14 got the comments from everybody else. Everybody else
15 being his dad, his brother, and Tom Cannady.

16 Q. Did you ever get the documents?

17 A. Never got the documents or the comments.

18 Q. Did you followup with him to try to get him to do
19 that?

20 A. Oh, yeah. Yes.

21 Q. What did you do?

22 A. Well, he responded back to saying our comments are
23 going to be coming but we really need to get this debt
24 straightened out, we got to get you on as a guarantor of
25 the debt and I'm calling the bank now to get you on the

1 debt guaranty.

2 Q. So at this time the previous guaranty had gone
3 away or were you still guaranteeing the debt at that time?

4 A. The way it's listed on the financial statements, I
5 did not know that he went and consolidated those two loans
6 to a new loan so we would have a different bank loan
7 number, which would have had to have been, redo the
8 guarantees.

9 Q. Were you willing to sign a guaranty for this new
10 loan he had taken out?

11 A. You mean the converted loan, if you will?

12 Q. Yes, the converted loan.

13 A. Sure. Sure.

14 Q. Did he ever present to you a loan guaranty
15 agreement for your signature?

16 A. No.

17 Q. Did you indicate to him that you would be willing
18 to do that?

19 A. Yes. We received a loan guaranty during discovery
20 that the bank had prepared but I didn't ever receive it,
21 and I would have been willing to sign it.

22 Q. Did you know that he had taken the old debts and
23 converted them into or combined them into a different
24 debt?

25 A. At what time frame?

1 Q. Back in spring of 2009.

2 A. No. We didn't know until fall of 2010, probably.
3 Or winter of 2010 during discovery and we pulled, we got
4 loan documents from the bank.

5 Q. All right.

6 THE COURT: Is this a good time to take a break?

7 MR. COX: It would be, Your Honor.

8 (Court recessed from 2:31 p.m. to 2:48 p.m.)

9 MR. COX: Are we ready?

10 THE COURT: Yes.

11 Q. (BY MR. COX) Okay. Now let's turn to page 69 of
12 Exhibit 6. Okay. We're taking a look now at page 69 of
13 Exhibit 6. And this is an e-mail that Mike writes to you.
14 You are familiar with this e-mail, I guess?

15 A. Yes.

16 Q. In this e-mail, and here we are November 20th,
17 2007, around the time of the loan guaranty. And here he's
18 talking about, he wants to make sure you are on the same
19 page regarding the purchase of the stock in Medicate
20 Central Pharmacy. What is he talking about here?

21 A. He's talking about, he's looking back at the MEZ
22 deal to see if he wants to go forward with the purchase of
23 his shares.

24 Q. So for the MEZ deal to work he would have to sell
25 some of his stock?

1 A. Well, the whole purpose of the MEZ deal was to buy
2 out his interest in Central, which is what he desired.

3 Q. So at this point is he wanting to sell his whole
4 interest or has he modified that?

5 A. Now it's been modified.

6 Q. And how has it been modified?

7 A. He wants to sell half of his 50 percent, or 25
8 percent of the overall business.

9 Q. One of the things I wanted to ask you about is in
10 the third sentence. He says, additionally we calculated
11 the profitability of DeliverMed. I guess that's the mail
12 order part; right?

13 A. Yes.

14 Q. And that of Medicate Pharmacy retail. And then he
15 says, we withheld calculations for Odyssey and Hope
16 Hospice as well as Cambridge House.

17 What is Odyssey?

18 A. I don't recall. I'm sorry. It was another one of
19 those either hospice or a nursing or assisted living
20 centers.

21 Q. So in making his calculations, he's not including
22 any value of, a calculation for value, he's not including
23 the value of these three parts of it; is that correct?

24 A. That's correct, yes.

25 Q. Was it your understanding that the change in the

1 structure whereby you would become an owner of Medicate
2 Central would include those things?

3 A. Yes. It would include everything in the, that is
4 done inside the brick building in Washington Park, which
5 would be Odyssey, hospice, Cambridge, retail, mail order.

6 Q. So, his valuation here which I think he sets forth
7 saying he needs \$1.8 million for the pharmacy shares would
8 not include the value of those other components of
9 Central; is that correct?

10 A. Other components of what? I'm sorry.

11 Q. Of Central. It doesn't include Odyssey, Hope
12 Hospice or Cambridge in that valuation he's put on it.

13 A. Correct.

14 Q. And so at this point can you telling from reading
15 this document whether he is saying when he says, I need
16 1.8 million for the pharmacy shares, whether he's talking
17 about all of his shares or just a part of them?

18 A. Well, since he wants to retain 25 percent, it
19 would, the way it reads it makes me understand that he
20 wants -- the 1.8 million is comprised of 25 percent of
21 overall business.

22 Q. One of the things I wanted to ask you about is, we
23 talk in the first, he talks in the first sentence about
24 purchase of stock. And he's talking here about selling
25 stock or shares of Medicate Central Pharmacy; is that

1 correct?

2 A. Correct.

3 Q. But going on down here, he says, in order for
4 there to be a purchase of stock -- he's referring to
5 shares of the business; right?

6 A. Yes.

7 Q. He says, he's continuing to I guess treat himself
8 as owning 50 percent of those shares of stock, and he
9 wants to sell 25 percent of his shares of stock in
10 Medicate Central. Is that what he's saying?

11 A. That's what I'm reading, yes.

12 Q. And so he says he needs 1.8 million for the
13 pharmacy shares so, did you read this to mean that you own
14 40 percent of those shares at that time of that stock?

15 A. Correct.

16 Q. Does this document reflect your understanding of
17 the agreement that you had with Mike and Joey that each of
18 you would receive shares of stock in Medicate Central
19 according to these, according to these figures, these
20 percentages?

21 A. Yes, we would own stock in Medicate Central
22 Pharmacy.

23 Q. Now, are these the correct percentages or did you
24 agree on different percentages that would be if you owned
25 all, a portion of all of it?

1 A. We agreed to different percentages.

2 Q. And so your percentage wouldn't have been 40
3 percent, what would your percentage have been?

4 A. Ultimately there was some changing around for the
5 first couple months but it settled at 35.9 percent.

6 Q. Okay. And so here he is referring to stock, I
7 guess, as pharmacy shares as part of it being, part of it
8 being owned by you; is that correct?

9 A. Correct.

10 Q. And then he goes on and asks for some additional
11 things here and so on. Now, at this point in time is
12 DeliverMed Holdings still handling the marketing and
13 sales?

14 A. Yes.

15 Q. And Medicate Pharmacy is still handling the
16 prescriptions; right?

17 A. Yes.

18 Q. Okay. Now, are the retail pharmacies still
19 operating at this time?

20 A. Yes.

21 Q. Okay. When you saw this Exhibit 6, page 69, when
22 you saw this e-mail from him, how did you respond?

23 A. Well, I was trying to figure out what he was
24 saying. Was he saying that the 1.8 was 50 percent or was
25 the 1.8 twenty-five percent.

1 Q. Okay. Let's take a look at page 73 then. And at
2 the bottom we see the remnants of his, of his previous
3 e-mail. And what is your response here and when did you
4 make it?

5 A. I made my response on November 23rd, Friday -- I'm
6 sorry, 2007.

7 Q. Okay. So just to be, just to be very, very clear,
8 this, this thing you are going through with him talking
9 about the value of his 25 percent of the shares of stock
10 is of Medicate Central, of the whole Medicate Central
11 business? Is that what you are talking about?

12 A. Yes.

13 Q. Would the MEZ financing people have accepted
14 anything less than all of the Medicate Central business,
15 that is, including Odyssey, Cambridge, hospice, so on,
16 would they include all of it?

17 A. All of it.

18 Q. And so what do you say to him about this valuation
19 that he's, he's talking about?

20 A. May I read it?

21 Q. Please.

22 A. Most of what you are saying is correct, however
23 the whole business is 3.6, then the 50 to 60 percent you
24 own is estimated to be 1.98 million and then 25 or 50
25 percent of your shares is valued at 990,000 sales price.

1 Warrants of, warrants of 10 percent are exercisable and
2 not issues.

3 Q. What does that mean?

4 A. What it means is, it's an option you can exercise
5 in the future. His request was that he wanted to have the
6 right to purchase those back. I couldn't imagine how
7 somebody would want to fund a deal and say, yes, I'll give
8 you right of first refusal. They, they want to buy it for
9 the increased value of the business. So it's really not
10 issued shares, it's an option to buy shares.

11 Q. Okay. So if we go to the top then, when does he
12 respond to you?

13 A. That is Sunday, November 25th, 2007.

14 Q. Okay. And so you have said to him, look, if the
15 whole business is 3.6 million, then you have miscalculated
16 your 25 percent of your shares, which you are talking
17 about the shares of the stock is valued at 990,000. And
18 so what does he say about that?

19 A. He says, Mark, comma, I'll explain when we meet
20 but if you look at the financials for this year and the
21 next few years our -- number sign, meaning numbers -- are
22 going to continue to grow. I'm not basing on what I want
23 for my 25 percent on past performance but on what it would
24 be worth if we continued at the status quo or increasing
25 our business as we are. Looking at the current numbers my

1 50 percent is bringing netting approximately 600K --
2 meaning 600,000 -- this year. And I'll continue to get
3 larger as we grow. Basing a purchase of half of my shares
4 will cost three times that number, and I guess that means
5 three times the 600,000.

6 Q. So that would add up to 1.8 million --

7 A. I'm sorry. I talked over you. I apologize. It
8 would add up to 1.8. Correct.

9 Q. Okay.

10 A. I would be a fool to agree to any value of any of
11 my shares at less than that. We can discuss it tomorrow
12 or Tuesday. Also, the note changes my position with the
13 bank.

14 Q. What is, what is he talking about? What note?

15 A. I don't know there. I, I -- I'm not exactly sure.

16 Q. Okay. Go ahead.

17 THE COURT: Hold on a second. Wouldn't it be
18 talking about the note at Bank of O'Fallon, that the
19 guaranty was signed 11/19/07 by Mr. Swift?

20 THE WITNESS: Correct. But I don't know what he
21 means by change in my position with the bank.

22 Q. (BY MR. COX) Okay. You know what note he's
23 talking about --

24 A. Yes, I do.

25 THE COURT: That's what -- I thought he said he

1 didn't know what note he was talking about.

2 THE WITNESS: I apologize.

3 MR. COX: That's fine. We can clarify that,
4 Judge. I appreciate it.

5 Q. (BY MR. COX) You know what note he's talking
6 about but you, you don't know what he means when it says
7 it changes my position with the bank.

8 A. Yeah, from that point on it says the note changes
9 my the position with the bank.

10 Q. Go on ahead. Let's see if we can figure this out.
11 It says, they see it as I am still the responsibility
12 party for 2 to 3 million dollars, meaning he's on the
13 note, he's personally guaranteed it.

14 A. He's a guarantor of the note.

15 Q. And then it says, I then have a side agreement
16 unenforceable by the bank with you and Joe. What does he
17 mean by that, do you mean?

18 A. He assumes that guaranty note that Joe and I
19 signed is not enforceable by the bank. But as you recall
20 from my previous testimony, the bank surely considered it
21 enforceable.

22 Q. If we are going to use the Bank of O'Fallon and a
23 guaranty, the three of us will have to be put on the note.

24 Is he saying that he wants all of you to be
25 signators on the note in addition to being guarantors or

1 do you know what he's talking about there?

2 A. I just know I'm a guarantor. I don't know what he
3 meant by, all three of us on the note. Because when
4 you're a guarantor you are on the note.

5 Q. All right. So, at this point in time, in November
6 of 2007, you have made an agreement with him that you are
7 going to get shares of stock in this business, in this
8 corporation, and that, he's talking about the selling of
9 part of his shares of 50 percent of that stock. Is that
10 what's happening?

11 A. He is actually readdressing the MEZ loan in
12 talking about what he thinks I would be a fool to sell for
13 anything less than that.

14 Q. Right. But what's he selling?

15 A. Shares of Medicate Central.

16 Q. And how did -- what amount of Medicate Central
17 does he see himself according to this e-mail as owning?

18 A. 50 percent.

19 Q. Did you agree or disagree with his, with his
20 valuation that he's put on it here of 3.6 million as of
21 November 25, '07. When you read this, did you agree or
22 disagree or have an opinion at that time about it?

23 A. I -- he's selling the stock. It's his valuation
24 of what he wants for the stock. He set the value so
25 that's his choice.

1 Q. Going back to page 69, as to this valuation, does
2 it appear here in the top of page 69, the second sentence,
3 that he has reviewed the financials with his brother and
4 father?

5 A. Yes.

6 Q. And, and by financials what did you understand
7 he's talking about here?

8 A. The financial statements of Medicate Central
9 Pharmacy.

10 Q. Was there only one set of financial statements,
11 those prepared by Schaltenbrand and Schaltenbrand?

12 A. At this time I only knew of the one that existed.

13 Q. Okay. And so in other words there's not some
14 other auditing firm or CPA firm or somebody else creating
15 financial statements, Schaltenbrand and Schaltenbrand was
16 all there was?

17 A. Correct.

18 Q. And did he, does he indicate whether his father
19 and his brother agree with this value he's put on it?

20 A. He is saying, my father -- my brother and father,
21 and then he says, we, meaning collectively, brother,
22 father and him, agree that the valuation of the business
23 is \$3.6 million.

24 Q. I wanted to ask you about the new percentages.
25 Who came up with those? Did you come up with the change

1 in the percentages?

2 A. No, Mike came up with those after meeting with his
3 brother and his dad, Schaltenbrand and Schaltenbrand.

4 THE COURT: What were the new percentages?

5 MR. COX: I'm going to show you right now. I have
6 it.

7 THE COURT: Sorry to interrupt, and I'm
8 interrupting both of you, but when I got a question in my
9 head, if I don't ask it, I forget it.

10 MR. COX: I'm happy for you to. And you don't
11 have to have permission to ask it. Ask away.

12 Q. (BY MR. COX) No, I appreciate the questions and
13 this is the answer to that one.

14 A. Courtney, can you tell me what page this is?

15 Q. This is page 95 of Exhibit 6, and here we are
16 January the 16th of '08. Mike is writing to you and is he
17 telling you anything here about the percentages? And the
18 thing I wanted to ask you about is, first of all, he has
19 some percentages in the first sentence. Would you read
20 that sentence and explain it to us?

21 A. It says, Mark, comma, I have discussed the
22 percentages with Larry and dad, they seem to work out with
23 16 percent retail, 79 percent mail order, and 5 percent
24 hospice and Cambridge House.

25 Q. Now what does that mean? What's he talking about

1 there?

2 A. It's talking about the percentages of sales.

3 Q. Okay. So he's indicating 16 percent of the sales
4 of the whole Medicate Central Pharmacy? Is that what we
5 are talking about?

6 A. Yes, I'm sorry, Medicate Central. Let me
7 paraphrase it. Of the whole Medicate Central, 79 percent
8 of the revenue is mail order; 16 percent is retail; 5
9 percent for hospice and Cambridge House.

10 Q. Okay. Now, then he goes on to say, the
11 percentages for separation of my 100 percent of 16 percent
12 of retail and 50 percent of 79 percent mail order becomes
13 55.85 percent, yours becomes 35.32 percent, and Joe's are
14 8.83 percent.

15 So are those that I just read, the 55, 35, and 8,
16 the number percentages that are going to be applied to
17 this shares of this, of the entity Medicate Central which
18 is being created?

19 A. Yes. The 55, the 35, the 8, yes.

20 Q. And then he goes on to talk about, Joe and I are
21 discussing swapping percentages, Joe has in Respiratory
22 for DeliverMed, if that's okay with you.

23 And eventually were these percentages that we see
24 here changed as a result of some swapping that was going
25 on with Joe and with Mike?

1 A. Yes.

2 Q. And so what are the final percentages that we end
3 up with after everything is finished?

4 A. Mine is 35.9 percent. Mike's was like 51.1
5 percent. And Joe was the remainder to equal 100 percent.

6 Q. Okay. Now, these changes in percentage that we
7 have talked about here, when did that actually take
8 effect?

9 A. January 1st, 2008.

10 Q. Now even though the -- so even though the
11 paperwork was, wasn't completed, the business actually
12 changed the way it operated at that time and operated as
13 though the paperwork had been completed?

14 A. Correct.

15 Q. Now let's take a look at page 102. At this point,
16 what's the date?

17 A. I'm sorry but there's a couple e-mails here.

18 Q. Okay. Let's start with the bottom one. Let me
19 get that out for you. Now the bottom one is dated what?

20 A. May 28th, Wednesday, 2008.

21 Q. Okay. And you are writing to Mike and Joe?

22 A. From Mark Swift to Mike and Joe Siddle. And it
23 has two "Joe Siddle@" because Joe had two different
24 e-mails.

25 Q. Okay. And what are you talking about here?

1 A. Well, we just did this, I think I described
2 earlier this very large marketing that started March 10th
3 and was running through the end of May. And I had talked
4 about if we wanted to continue it, what it was going to
5 cost, and the other, we needed some financing with them,
6 some funds.

7 Q. So -- see, you're telling them how much you need
8 for marketing expense?

9 A. If we wanted to continue that program we were on.

10 Q. Now, I wanted to ask you about the next part. It
11 says, the good news is, we have closed on Neuman --
12 N-E-U-M-A-N -- and Associates. What is that?

13 A. Neuman and Associates is a series of homes
14 throughout Chicago where mentally challenged adults who
15 are wards of the State live in group homes. And there was
16 a pharmacy by the name of Sutcliff Pharmacy which was
17 currently servicing 645 to 800 patients, and had a
18 relationship with the people there and they had some
19 issues, not big ones, but they were looking for somebody
20 to cover the whole area by mail order would work because
21 some of the houses they had fell outside the area of
22 Sutcliff's ability to deliver. And I told them we could
23 mail the drugs up to the homes and they could be
24 distributed there.

25 Q. So how did this, how did the mail order business

1 or let's call it at this point, we would call it Medicate
2 Central, how did Medicate Central get this business?

3 A. I -- from me. I have known the people at Neuman
4 for five years, six years, at that point in time.

5 Q. So you developed this business?

6 A. Yeah.

7 Q. And brought it to the Medicate Central?

8 A. correct.

9 Q. And so it's -- you indicate here, you are going to
10 transfer 645 to 800 patients over the months of June and
11 July here I guess in 2008, and so what would you estimate
12 that be in terms of additional revenue to the business?

13 A. Can I use a calculator?

14 Q. Okay.

15 A. Is that okay? Because I can -- I know how to do
16 the -- sorry, but off the top of my head I do not know.

17 Q. Okay, no problem.

18 A. I'm going to use the 800 number just for -- or
19 let's use like a 725, which is sort of a midpoint. And
20 Neuman does not have a lot of script for patients, they
21 only have about three prescriptions per patient, and at
22 the 5495 which we bill per patient, that's \$119000 a
23 month, for 12 months, it's \$1.4 million in revenue.

24 Q. Per year?

25 A. Per year. Additional revenue.

1 Q. Okay. And then you go on to say at the end there,
2 I will be in Washington Park next week, working with
3 restatement of financial statements.

4 What are you talking about?

5 A. We were trying to calculate the, for the accruals
6 for the previous years, getting those off the books, and
7 expenditures, so we made some accruals in 2007 that had to
8 be taken off the books and that's the restatement, we had
9 to do a little accounting work, some accruals and some due
10 tos and due froms between the companies were, had to be
11 offset it.

12 Q. At this point who are you working with on that?

13 A. Larry.

14 Q. Junior?

15 A. Or, I'm sorry, Larry Junior, yes.

16 Q. Okay. So by this time you are getting information
17 from him?

18 A. Yes.

19 Q. Now, going to the one above it, let's take a look
20 at this. This is from you to Mike. The next day. But if
21 we look underneath that we see an e-mail from Mike; is
22 that correct?

23 A. Yes.

24 Q. And what is Mike telling you in this e-mail?

25 A. It says, Mark, comma, there are no funds available

1 for marketing at this time. We exhausted all funds in the
2 line of credit and borrow an additional line of 150,000 to
3 make McKesson payment. We also owe HD Smith 100,000 from
4 last week. I'm awaiting a call from Kip -- meaning Kip
5 Atkins at the Bank of O'Fallon -- to see if we can add
6 funds to our present line. I have not heard from him
7 since I last called him when we were all together. I am
8 sure it is not the news we want to hear. I will continue
9 to call him today.

10 Q. Well, this sounds pretty grim here. Did you have
11 any idea at this point before you received this e-mail
12 that the, that not only was the business out of money but
13 he's talking about having to go borrow more money from the
14 bank?

15 A. I didn't know prior to this e-mail, no, I
16 didn't know what the, the amount owed to the different
17 people were -- was.

18 Q. And, and at this time is, is he still taking his
19 distributions, Mike?

20 A. Yes.

21 Q. Let's go up to the one above it.

22 A. By the one above, are you referring to the May 29,
23 Thursday?

24 Q. I am. This is -- well, let's first begin with the
25 one just above what he wrote. Let's take that one.

1 A. That is also dated May 29th, 2008, Thursday. Let
2 me just say, it's 12:18 p.m. It's from myself to Mike.

3 Q. Now how do you respond to this report from Mike
4 that you -- the company needs to borrow more money?

5 A. It says, let's see what cash we have -- let's see
6 what cash we have, we have payables due Thursday. I don't
7 want to shut down of call center. We have to patch work
8 the cash until the tax refunds received.

9 Q. What are you saying to him?

10 A. Well, at this point in time Mike went into the
11 business and took out several hundred thousand dollars to
12 pay his personal taxes in April 15, 2008, which severely
13 choked our cash flow. And after it was mailed, after the
14 checks were sent out, I said, wait a minute, you've got
15 accruals here, you are an accrual accountant, you can make
16 adjustments on your, on your taxes, probably accrue
17 things, and you will not owe that much taxes. And you
18 have overpaid your taxes and taken the company's money.

19 Q. So what do you mean, I don't want to shut down of
20 the call center.

21 A. It takes a long time to get a call center going
22 where they call patients and you have what they refer to
23 as partials, where you may have like 80 percent of the
24 information, they may have to call the patient to get the
25 other 20, and you have this like rolling ball of work in

1 progress going on. And as they get completed they start
2 bringing them to us. If you shut down the call center and
3 say, we're not going to pay you, we don't want to do any
4 more work, all the stuff that's in progress you have paid
5 for you have just lost because, by the time you restart
6 it, those people are not interested or have gone their own
7 way.

8 Q. So we look now at the top, is Mike's response to
9 you, it looks like the same day, not too long after that.
10 And how does he respond to you about this?

11 A. He says, I know we don't want to shut down the
12 call center and try restarting it. I have called and left
13 yet another call for Kip. My hope is he will call with
14 another option of additional line of credit and we can
15 proceed. I just -- I think he said, I just missed your
16 last call and I'm on another phone. I will call you when
17 I get off.

18 Q. Okay. Let's now turn to page 107. Let's look at
19 the bottom e-mail first on page 107 of Exhibit 6. You're
20 writing here to Joe; is that right?

21 A. Correct.

22 Q. I first want to ask you about the subject. You
23 call it DeliverMed 3. What is that?

24 A. We classified each marketing campaign into different
25 DeliverMeds: DeliverMed 1, DeliverMed 2, DeliverMed 3,

1 and they were by a certain time frame. And then we'd keep
2 track of those patients in the system by that name,
3 DeliverMed 1, 2 or 3. We used the information for various
4 reasons. The biggest reason was, how long had DeliverMed
5 1, meaning the first marketing we did, was still with us
6 today. And how long had DeliverMed 2 is still, et cetera.

7 Q. When you say a marketing campaign, what is a
8 marketing campaign?

9 A. We talked about it earlier where we take down and
10 we determine we want, say we all sit around the table,
11 Joe, Mike and I and say we're going to try to get 1500 new
12 patients. And we work back in the formula and say, it's
13 going to take so many mailing, so much call, so much the
14 combination of two, and figure that whole process out.
15 And that whole process we run for a period of time and
16 then that's called a campaign.

17 Q. And who determines the period of time?

18 A. Well, the period of time is determined by the
19 number of patients that we all agree to want to try and
20 obtain.

21 Q. For example, roughly speaking, DeliverMed 1
22 campaign was about how long?

23 A. Oh, I'm -- several months.

24 Q. Okay.

25 A. DeliverMed 2 was several months. DeliverMed 3 was

1 just a short time. That's that real aggressive campaign
2 we did from March 10 to May, end of May of 2008.

3 Q. So what are you saying to Joe here about the
4 DeliverMed 3 campaign?

5 A. We had binders at the, which went by campaigns
6 showing what DeliverMed spent on each of those, show
7 receipts, show some marketing analysis of each one, and we
8 had them in binders 1, 2 and 3. And we wanted to review
9 DeliverMed 3's to see what was accomplished because our
10 cost of obtaining patients as time went on was getting
11 more and more expensive because there's less and less
12 patients who want to sign up to our service so it takes a
13 lot more effort, a lot more money, to get them.

14 Q. So going down now to the last sentence of that, it
15 says, I feel like Oliver Twist. What is -- could you read
16 that for us?

17 A. Okay. Let's start at the beginning. It says,
18 it's the principle and sloppy way the financing has
19 occurred, parentheses, the taxes being a prime example,
20 parentheses. I feel like Oliver Twist when it comes to
21 disbursements. There's always confusion and
22 misunderstanding. I just cannot be that complex. And to
23 think I'm supposed to believe this means I must be
24 perceived as a fool.

25 Q. What are you talking about here, Mark?

1 A. In Dickens' classic book Oliver Twist, the little
2 boy goes up with his bowl and says, may I have some more
3 please, sir? And I felt like I was having to do that all
4 the time to get my distribution.

5 Q. When you say there's always confusion and
6 misunderstanding, what are you talking about?

7 A. Well again, Mike would only be in there Fridays,
8 and sometimes I would be down there Tuesday through
9 Thursday, and Mike was going to sign the distribution
10 checks, he was going to do it, he left, went to the lake
11 house, was out at the golf course or something of that
12 nature. And I would call Joe and say, what's going on?
13 Well, Mike thought we were going to do that on Monday.
14 Or, we're confused as to where that goes.

15 And he said, well, and where does Mike -- we're
16 not sure where Mike is. We can't find him. And Mike's --
17 Mike's got to execute that. And there was always a
18 confusion. There was always a reason why we weren't
19 getting -- you know, we were out of money but we took out
20 hundreds of thousands to pay personal taxes. There was
21 always confusion and it always seemed like it's a very
22 complex issue when it's a rather simple issue.

23 Q. And then you go on to say, and to think I'm
24 supposed to believe this. What is "this"?

25 A. Believe that it really is that confusing, that

1 complex, to issue distribution checks.

2 Q. And what do you mean by, this means I must be
3 perceived as a fool?

4 A. If anybody expects a logical person to agree that
5 it's complex and it's involved and it's really, there's
6 always an excuse, then they're treating you like a fool.

7 Q. Well, let's go up to the top then and we see
8 Joey's response. And how does he respond to you?

9 A. Nobody thinks you are a fool. Mike and I believe
10 in you and we are where we are at because of you. Nobody
11 has questioned your marketing funds, I'm just trying to
12 show you the trust and respect we have for you. The
13 problem might be I don't communicate to Mike when you are
14 upset. I don't communicate to Mike our conversations to
15 him. So he doesn't know how you feel. Mike has never
16 questioned the market funds. I am the one asking you.
17 Mike comes in once a week, answer as his e-mails, returns
18 calls and leaves. He leaves the marketing and operations
19 to you and me. All the times the three of us are
20 together, we cannot communicate through our feelings with
21 distributions craziness.

22 Q. What did you understand this to mean, this
23 distribution craziness?

24 A. Just what I described earlier, Mike's not here,
25 Mike's at the golf course, we can't do this, oh, there was

1 some money we had to use for something else, oh, he had to
2 pay all of his taxes so there's nothing left for us. That
3 crazy ness.

4 Q. And his description here of what he talks about
5 Mike only coming in once a week and so on, was that
6 consistent with what you, yourself, observed?

7 A. What I observed, yes, he was -- he was regularly
8 there for about two or three hours every Friday, but
9 that's about the only time.

10 Q. Well, let's now move forward to the next month.
11 We're working our way up now to July the 12th, 2008, and
12 we're going to look at a page 114. You are writing to
13 Mike on Saturday July the 12th. And what are you telling
14 Mike here?

15 A. You're talking about the bottom e-mail; correct?

16 Q. I am.

17 A. This is when I learned about, that all those
18 patients were lost that we had done on that aggressive
19 marketing campaign. And I -- the subject is a meeting.
20 And I said, we have had a significant revenue leak. Joe
21 asked for help. John Tollefson and I will concentrate the
22 next few weeks on this topic. I would like to meet with
23 you on Wednesday to go through the accreditation, the
24 revenue leak, and the tax refund status. Also the status
25 of marketing. I covered all these issues with Joe this

1 past week. I would like him to stay at the pharmacy while
2 we meet. With limited time Joe has before vacation, we
3 need every moment of his time working with John. Thanks.

4 Q. Let's talk about this for just a minute. When you
5 talk about a revenue leak, what are you talking about?

6 A. Lost patients.

7 Q. Okay. In other words, you lose patients, sales go
8 down.

9 A. Correct.

10 Q. And you are talking about Joe asked for help. Is
11 that where he asked for John Tollefson to come help?

12 A. Yes.

13 Q. All right. And then you indicate, John Tollefson
14 and I will be concentrating for the next few weeks on this
15 topic. Did you and John Tollefson work together to remedy
16 this problem?

17 A. Yes. I was stating that because Joe was going to
18 go off to Africa and I just couldn't have John walk into a
19 pharmacy where people don't really know him and say, start
20 doing this. So I had to come down there and go through
21 what I knew before he -- just to help him out. And Joe
22 helped quite a bit for like the 24 hours before he took
23 off to Africa and I left the project for Joe and I -- I'm
24 sorry, for John and I.

25 Q. Okay. Now then you go on to say, I would like to

1 meet with you, meaning Mike, on Wednesday, to go through
2 the accreditation, revenue leak and tax refund status.

3 Let's talk first about accreditation. What were
4 you going to talk to Mike about in terms of accreditation?

5 A. At that time Medicaid was requiring accreditation
6 of pharmacies for various reasons but probably the main
7 one that affected us was to be able to build Part B -- as
8 in boy -- for diabetic supplies. You had to be an
9 accredited pharmacy. Very similar to accreditation, if
10 like people are familiar with joint accreditation of
11 hospitals, it was now moving down to the retail pharmacy
12 area. So we were in the process of doing all of the
13 documentation, getting all the binders together and
14 everything for accreditation.

15 Q. So DeliverMed is bringing in through these various
16 campaigns additional patients but on the other end they're
17 leaking out, they're being lost, is that what you are
18 talking about with the leak?

19 A. Yes, they were leaking faster than we could fill.

20 Q. And in addition you have large distributions and
21 that are affecting the, what's available to pay bills in
22 the business; is that correct?

23 A. Correct.

24 Q. So Mike then responds there at the top, what do
25 you mean significant revenue leak?

1 Was he not aware that this problem existed?

2 A. Well, when we were in Las Vegas, we being Joe and
3 I, we had called him several times --

4 Q. When was that?

5 A. Just before this.

6 Q. Okay.

7 A. Like several days. Like we probably even came
8 back maybe that day or so. And I kept on, we would e-mail
9 Mike a couple times, say we have a revenue leak issue,
10 call us. We didn't get a response. So I crafted this
11 e-mail up as another way to try and find him and
12 communicate with him what was going on.

13 Q. Okay. We're going to now turn over to page 120 of
14 Exhibit 6. This is an e-mail from Mike to you dated
15 September 30, 2008. And now he says, Mark, I have
16 reviewed your expenses. What expenses are those?

17 A. Travel expenses. Expenses for phone lines I had,
18 cellular expenses. In this case, some bonus payments that
19 we made out to the folks, things of that nature. And they
20 were all assembled and I submitted an expense report for
21 reimbursement.

22 Q. For your --

23 A. Personally.

24 Q. For the business expenses you are having?

25 A. That I incurred.

1 Q. There was a question here about a 900-dollar cash
2 payment bonus. What was that?

3 A. We had -- one of the things to try and shore up
4 the damage of the lost revenue leaks was we had certain
5 goals, how many patients we retained, how many -- there
6 was a variety of variables, I can't remember them all
7 right now, how many patients we got executed that week so
8 we wouldn't have a backlog, and we developed all these
9 targets. And if everybody hit their goal as a group, they
10 each got, I can't think, I think it was 25 or \$50,
11 something of that nature. And they each got a 50-dollar
12 bonus and we -- I set the barbecue up outside and I
13 barbecued lunch. It was an employee program.

14 Q. I see. And here he's questioning you on items
15 like \$12 and \$218, \$500. And at the same time what is he
16 taking out of the business in terms of distributions?

17 A. Well, a standard distribution for his child
18 support and alimony. You know, a lot of personal expenses
19 were to be found later.

20 Q. On the credit cards?

21 A. Credit cards and direct ones for country clubs,
22 thinks of that nature.

23 Q. I see. Now let's take a look at Exhibit 96. We
24 have looked at this before.

25 MR. COX: Exhibit 96.

1 THE COURT: Oh, Exhibit 96?

2 MR. COX: Yes.

3 Q. (BY MR. COX) Mark, who prepared this?

4 A. I did.

5 Q. And what did you prepare it from?

6 A. Well, each column probably has some other source
7 of production.

8 Q. Well, let's take a look at it. The first column,
9 the distributions, where did you get these figures?

10 A. The submitted tax return schedule. I think it's
11 M-2.

12 Q. So these are off the tax returns for Mike or for
13 the business?

14 A. For Mike.

15 Q. Okay. So you went to his personal tax returns. I
16 see in 2011 there's a zero for distribution.

17 A. Correct.

18 Q. Why is that?

19 A. At the time we did not get -- we requested for the
20 2011, we just recently got that.

21 Q. Okay. So that would have to be added in?

22 A. Sure.

23 Q. Okay. And what did his distributions add up --
24 according to the tax returns for your review?

25 A. Without the 2011?

1 Q. Yes.

2 A. Approximately 3.3 million.

3 Q. So those were distributions he received from the
4 mail order business and after 2008 from the Medicate
5 Pharmacy Central business that you were partners in; is
6 that correct?

7 A. This was off the taxes. I don't know how he
8 grouped it, but that's what he received as distribution
9 off the taxes.

10 Q. And going to the second column, that's for W-2
11 salary. Where did you get those figures?

12 A. From SDIC, Southern Data Illinois Corporation, who
13 does the payroll. We subpoenaed the payroll records for
14 Michael Schaltenbrand and came up with those numbers.

15 Q. And what's the total salary Michael's received on
16 W-2?

17 A. Approximately 567,000.

18 Q. And then in the third column we have his salary
19 for non W-2. What do you mean by that?

20 A. The thousand dollars a week that he took.

21 Q. So the thousand-dollar salary that I talked with
22 him about in his testimony, the thousand dollars per week,
23 that was not paid on a W-2?

24 A. Correct.

25 Q. Just like yours wasn't paid on a W-2?

1 A. Correct.

2 Q. If so, did you -- where, where did you say you got
3 all that information?

4 A. Well, the general ledgers would show that. 2011,
5 we didn't get until later, and he bumped it up to \$1500 a
6 week.

7 Q. So, for 2011 it increased from a thousand a week
8 to 1500 a week?

9 A. Correct.

10 Q. All right. And so you added all that up, not
11 counting 2011, and what would you get?

12 A. 312,000.

13 Q. So we would have to add to that, you're the
14 accountant, 52,000 and --

15 A. About 75,000, just call it.

16 Q. About 75,000, okay. Whatever 1500 times 52 is.

17 A. About 78,000.

18 Q. I had a good English teacher, I'm not so sure
19 about the math.

20 And let's see, let's go to company paid certainly
21 expenses. Where did you get these numbers?

22 A. During discovery and subpoenaed we got the various
23 credit card statements for Mike Schaltenbrand for the
24 different business, and the business of being Chase and
25 Bank of America and, et cetera, and just went through and

1 picked out some of the amounts that I could trace to the
2 general ledger.

3 Q. And do you have confidence that this is all of
4 them?

5 A. Oh, no, I do not have confidence. I don't even
6 know what percent -- this could be a fraction or it could
7 be a third or a half, but it's way, it's way below 100
8 percent.

9 Q. And so according to these figures what's the total
10 from 2005 through 2011 that Mr. Schaltenbrand has, has
11 received from this business?

12 A. I'm sorry, since -- for the credit card or the
13 total?

14 Q. For the total.

15 A. Just to round it, about 4.5 million.

16 Q. In a business like this, if you withdraw that much
17 money from the business for either expenses, salary, or
18 distribution, what effect would that have on the need for
19 the company to borrow money to keep expenses paid?

20 A. It can only come from two sources, and that is
21 profits or from loans.

22 Q. All right.

23 A. I mean, it can come from a third source but we
24 would never had an example, that would be additional
25 contributing capital where somebody is putting capital

1 into the business. We never had an example of that.

2 Q. So would this kind of withdrawal cause you to have
3 to borrow more money?

4 A. Yes.

5 Q. And before we leave 2008, let's look at
6 Plaintiff's Exhibit 23, please.

7 MR. STINE: Did you say 28, Courtney?

8 MR. COX: 23.

9 MR. STINE: 23, okay.

10 Q. (BY MR. COX) Okay, we're looking at Exhibit 23.
11 This is dated October 13th, 2008. Please explain to the
12 judge the background of this document and how it came to
13 be created, if you know.

14 A. I do. I have a handicapped son. And one of the
15 things I'm going to have to do is to get a house and turn
16 it into like a group house which is the best way you know
17 that your son will be taken care of. And you'd hire a
18 resident to stay there and then they'd have three bedrooms
19 and three other people of his type that -- what I mean by
20 his type, I mean his skill level.

21 And there was a particular home and it was a very
22 complex, unusual story that -- it was right across from
23 the community center and that doesn't happen very often.
24 It was the perfect size home. And it had a very telling
25 tale of where the bank was repossessing it and then they

1 closed it and then they didn't want it, and it was falling
2 through all these things. And they had the most unusual
3 offer to people if they wanted to buy it. You could bid
4 on a phone auction, but you had to send proof of cash
5 abilities and business or things of that nature. And you
6 need to be registered to be one of the on-phone bidders.

7 And this is in October of 2008. One night after
8 work Joe Siddle asked me to go to a movie with him, I
9 think it was the Batman movie, he wanted to see the Batman
10 movie. So we went to the Batman movie that evening. And
11 I had been calling and leaving messages and texting Mike
12 during the day saying, I gotta get some verification
13 what's owed me because I want to enter this bidding
14 process.

15 And Mike was kind enough to leave his home and
16 meet me at a bar, a sports type bar right across from the
17 movie theatre, it had a sports theme to it, and so I could
18 explain to him what I was doing. And he said, well go see
19 Larry and Larry will put together your verification of
20 your earnings and things so that you can use it to state
21 your value to get in this bidding process.

22 Q. And is that Larry Junior?

23 A. That is Larry Junior, yes.

24 Q. So at that point you didn't have the numbers you
25 needed to fill in the blanks, in other words?

1 A. No, I did not have the numbers that tied to their
2 financial records and that's what I was trying to get
3 here.

4 Q. Okay. And so he said it was okay to talk to Larry
5 Junior?

6 A. Yes. And he set it up for me. He was very kind
7 that way. He set it up for me, told -- he either called
8 Larry or told me go to Larry about 2:00 in the afternoon
9 tomorrow. So I did.

10 Q. When you went there did you meet with Larry
11 Junior?

12 A. Yes, I did.

13 Q. And was he willing to meet with you?

14 A. Oh, yes.

15 Q. And now were -- did the two of you sit down
16 together and, and come up with this?

17 A. I, I mentioned to him what I was trying to do.
18 And he had examples of confirm or verification letters
19 that he had used in the past, in other words, that opening
20 paragraph or two.

21 Q. Okay.

22 A. And so we used his example. We created that and
23 then we had a bunch of blank lines. And he -- I gotta
24 thank him very much. He sat at the table, he brought out
25 all the files and stacked them up and we sat there

1 together back and forth. And he was picking the numbers
2 off the statements, telling me to write them down, and I
3 wrote some down, he wrote some down on, let's call it a
4 work paper. And he executed this and another one for me
5 so that I could use it for the bidding process.

6 Q. Looking down at 2008, it says, earnings not
7 distributed N/A. Why is that N/A?

8 A. Well, the change of the relationship in 2008.
9 What we did is drew a line in the sand and said, okay, all
10 2005, '06 and '07, we're going to have to make up those
11 past distributions. 2008, we're all going to get a pro
12 rata basis of distribution as you would in a sub S chapter
13 corporation type where one person takes out a dollar, the
14 other people have to take out the matching.

15 So going 2008, we all tried to balance all the
16 time to make sure that we were all in, in proportionate.

17 Q. All right. Now do you, yourself, know whether
18 these numbers are accurate or were you relying on Larry
19 Junior to provide with you this information?

20 A. I relied on Larry Junior. He had so many work
21 papers and so many schedules. He had done some work on
22 this.

23 Q. Okay. And we see here undistributed income, and
24 we talked a little about that. And that means income you
25 haven't -- you have earned but not received yet?

1 A. Correct.

2 Q. All right. Did having undistributed income affect
3 you in your taxes?

4 A. Yes.

5 Q. In what way?

6 A. Well, several ways. The whole tax filing
7 situation, that I still cannot file a final taxes. I have
8 filed some drafts but with explanations.

9 And it has affected me greatly because of my
10 inability to file taxes has affected my daughters'
11 education, both of them in. Because they're both NCAA
12 rowers, and the NCAA requires that you submit your tax
13 information so that they can monitor that, if a person
14 gets a grant, that it's not a way of getting around the
15 NCAA scholarship rules.

16 Then you have to submit your tax information to
17 the universities. For my oldest daughter, that's Columbia
18 University in New York City. And a younger daughter,
19 that's University of Wisconsin. And I have not been able
20 to do this and it's been a nightmare. It's affected my
21 daughters' financial education and we are coming up on a
22 time when it's going to affect it again, because I have to
23 have the Columbia filed on Cinco de Mayo, on May 5th. And
24 the Big 10 requires their filing on June 5th --

25 Q. And part of what you are asking -- I'm sorry.

1 And part of what you are asking the Court in this is to be
2 able to get that tax information so you can complete your
3 tax filings; is that correct?

4 A. Correct. Because for like one instance in 2007,
5 they sent a 1099 -- they being the Schaltenbrands -- sent
6 a 1099 to the IRS saying I received I think it was
7 \$627,000, which was a calculation of how much they thought
8 I should be paid, when I wasn't paid that amount.

9 Q. Okay.

10 A. And that caused even more IRS problems and more
11 NCAA and more PEL grant problems.

12 MR. COX: Your Honor, this is Exhibit 80. It's a
13 new exhibit.

14 MR. STINE: What was the number?

15 MR. COX: 80.

16 THE COURT: We're going to take a 10-minute break.

17 THE CLERK: All rise.

18 (Court recessed at 3:52 p.m. to 4:00 p.m.)

19 MR. COX: Moving Exhibit 23. Exhibit 23.

20 MR. STINE: Which one is that?

21 MR. COX: That's Larry Junior's verification. Has
22 that been admitted yet?

23 THE CLERK: No.

24 MR. COX: We'd move admission of that document.

25 MR. STINE: No objections.

1 THE COURT: That will be admitted.

2 MR. COX: And Exhibit 96, which is distribution,
3 salaries, and so on, that Mark testified he compiled.

4 THE COURT: That will be admitted.

5 MR. STINE: Judge -- do I get a chance to object?

6 THE COURT: No, doesn't matter.

7 (Off the record discussion.)

8 (Court recessed at 4:02 p.m.)

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REPORTER'S CERTIFICATE

I, Christine A. Simpson, Registered Merit Reporter and Certified Realtime Reporter in and for the United States District Court for the Southern District of Illinois, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of the electronic recording.

I further certify that I am not an attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 741-1000 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at Benton, Illinois, this 28th day of April, 2012.

s/Christine A. Simpson, RMR, CRR

Christine A. Simpson, RMR, CRR